SUPREME COURT OF THE UNITED STATES.

No. ~~230.~~ 111.

JAMES W. BADGER, APPELLANT,

vs.

DANIEL B. BADGER AND AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 230.

JAMES W BADGER, APPELLANT,

vs.

DANIEL B. BADGER AND AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

INDEX.

	Original.	Print.
Index of contents	1*a*	1
Bill of complaint	1	4
Answer of Badger	10	13
Parker	14	16
Bill of revivor	18	19
Answer of Badger	20	20
Replication	31	31
Evidence for complainants	32	32
Deposition of Richardson	58	53
Badger and *al.*	68	62
A. A. Badger	95	86
A. H. Badger	101	92
A. C. Badger	106	96
Jacob Badger	109	99
M. H. B. Sturgis	117	106
A. A. Badger	129	117
M. H. B. Sturgis	131	119
M. M. Smith	142	128
E. M. Smith	152	138
D. Gilpatrick	169	152
W. P. Hart	172	154
Respondent's testimony	179	160
Deposition of A. Brown	195	175
M. Wood	205	183
W. Parker	210	187
J. Quinn	216	192
E. J. Jones	225	199
Moses Pond	229	203
Appendix	233	204
Clerk's certificate	246	216

CONTENTS.

1 *a* ADVERTISEMENTS.

Sale of Broad street and North Federal court estates, Feb. 5, 1831, 178
Sale of Lynn estate, Distil-House square do., Cambridgeport, do 186–188
Sale of Broad street and North Federal court estates, March 12, 1831 188–189
Also. 193

AGREEMENT.

For publication and to use testimony taken in former suit 230

ANSWERS.

JOSEPH BADGER 10–13
SAMUEL D. PARKER 14–17
ERASTUS B. BADGER. 20–30
CITY OF BOSTON 30

APPENDIX.

Deposition of Joseph Badger 232–245
Bill of complaint 1–9
Bill of revivor. 18–19

CERTIFICATES.

Assessor of Boston 177
City clerk. 177
Sale of Lynn estate, Distil-House square and Cambridgeport 187–188
Sale of North Federal court and Broad street estates. 189

DEEDS.

Cotting to Daniel Badger. 44–45
Richardson & ux. to Daniel B. Badger 46–48
Jacob Badger to Daniel B. Badger. 48–50
Joseph Badger *et al.* to W. P. Hart 50–52
W. P. Hart to Daniel B. Badger. 52–53
Joseph Badger & *al.* to W. P. Hart 54–55
W. P. Hart to Daniel B. Badger. 56–57
Joseph B. Badger & *al.* to Daniel Gilpatrick 164–166
Daniel Gilpatrick to Daniel B. Badger 167
Augustus H. Badger & *als.* to James W. Badger 137–139

DEPOSITIONS.—PLAINTIFFS.

BADGER, ALMIRA A.	Direct interrogatories,	69–71
	Cross "	72–74
	Answer to direct interrogatories,	95–98
	Answer to cross "	98–101
	Cross-interrogatories by S. D. Parker	127–128
	Answer to " " "	129–130
BADGER, ALFRED C.	Direct interrogatories	79–81
	Cross "	81–83
	Answer to direct interrogatories	106–107
	Answer to cross "	107–109
BADGER, AUGUSTUS H.	Direct interrogatories	75–76
	Cross "	76–79
	Answer to direct interrogatories	101–103
	Answer to cross "	103–105
BADGER JACOB.	Direct interrogatories.	8–486
	Cross "	86–89
	Answer to direct interrogatories	109–113
	Answer to cross "	113–115
Exhibit B		115–116
Exhibit A		116–117
GILPATRICK, DANIEL	Direct interrogatories	163–164
	Exhibit A	164–166
	Exhibit B	167
	Cross-interrogatories	168–169
	Answer to direct interrogatories	169–170
	Answer to cross "	170–171
HART, WILLIAM P.		172–176
RICHARDSON, THOMAS	Direct interrogatories.	59–60
	Cross "	60–63
Exhibits		63–64
	Answer to direct interrogatories	64–65
5	Answer to cross "	65–67
SMITH, MRS. E. M.	Direct interrogatories.	147–149
	Cross "	149–152
	Answer to direct interrogatories	152–156
	Answer to cross "	156–159
	Exhibit A.	160–161
SMITH, MOSES M	Direct interrogatories.	135–136
	Exhibit A	137–139
	Cross interrogatories.	140–141
	Answer to direct interrogatories	142–144
	Answer to cross "	144–145

STURGESS, MARY H. B.	Direct interrogatories	89–91
	Cross "	92–94
	Answer to direct interrogatories	117–122
	Answer to cross "	122–124
	Exhibit C.	124–125
	Cross-interrogatories by S. D. Parker	126-127
	Answer to cross-interrogatories by S. D. Parker	131–133

DEPOSITIONS.—DEFENDANTS.

BADGER, JOSEPH	Direct interrogatories	233–236
	Cross "	237–241
	Answer to direct interrogatories	241–243
	Answer to cross "	243–245
BROWN, ANDREW	Direct interrogatories	191–192
	Exhibit A.	193
	Exhibit 4 X.	193
	Cross-interrogatories	194–195
	Answer to direct interrogatories	195–198
	Answer to cross "	198–200
JONES, EDWARD	Direct-interrogatories	221–222
	Cross "	222–223
	Answer to direct interrogatories	225–227
	Answer to cross "	227–228
PARKER, WILLIAM	Direct interrogatories.	208–209
	Cross "	209–210
	Answer to direct.	210–211
POND, MOSES	Direct interrogatories	224
	Cross "	224–225
	Answer to direct interrogatories	229
	Answer to cross "	229–230
QUINN, JOHN, JR.	Direct interrogatories.	213–214
	Cross "	214-216
	Answer to direct interrogatories	216–217
	Answer to cross "	217–218
WOOD, MRS. MARIA	Direct interrogatories	202–203
	Cross "	203–205
	Answer to direct interrogatories	205
	Answer to cross "	206

PROBATE PAPERS.

List of debts, Daniel Badger	32
Inventory of estate, do.	33–36
Debts due estate, do.	37
Additional inventory of estate of do	83

Administrator's 1st account 39–42
" 2d " 179–182
List of debts due by estate 182–183
Administrator's 3d account 183–185
Order of Supreme Court for sale of estate 185–186
Petition of administrators for renewal of license 160–161
Also 124–125
Replication 31

UNITED STATES OF AMERICA.
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Wednesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-two. Before the honorable Nathan Clifford, associate justice, and the honorable Peleg Sprague, district judge.

JAMES W. BADGER & *als.*
vs.
DANIEL B. BADGER & *als.*
} In equity.

The bill of complaint in this case was filed Sept. 6, 1858, and is in the words following, viz:

To the honorable the judges of the circuit court of the United States within and for the district of Massachusetts.

James W. Badger, of the city of Brooklyn and State of New York, and a citizen of said State, and David J. Badger, of Brattleboro', in the State of Vermont, and a citizen of said State of Vermont, bring this their bill against Daniel B. Badger, of the city of Boston and commonwealth of Massachusetts, trader, and Samuel D. Parker, of said Boston, counsellor-at-law, and Joseph Badger, of Milton, in said commonwealth, all citizens of said commonwealth and the city of Boston, a municipal corporation established in and by the laws of said commonwealth.

And thereupon your orators complain and say that, on or about the —— day of September, in the year 1819, Daniel Badger, of said Boston, trader, died, leaving real and personal estates of which administration was necessary; that, at the time of his death, there were living Ann Badger, his widow, and ten children, to wit: the said James W. and David J., your orators, and Augustus H. Badger, Jacob Badger, Almira A. Badger, Mary H. B. Badger, now the wife of Benaiah P. Sturgis, Eliza M. Badger, now the wife of Moses M. Smith, and Ann J. Badger, now the wife of Thomas Richardson, and Alfred C. Badger, all then under the age of twenty-one years, and the said Daniel B. Badger, one of the defendants.

That on the 29th day of February, 1819, the said Daniel B. Badger and Joseph Badger, also of said Boston, were appointed adminis-

trators of said estate; that on the 18th day of October, 1819,
2 they filed in the probate court an inventory of the personal estate, amounting to the sum of $1,721, and of real estate, valued at $12,470; and on the 8th day of May, 1820, an additional inventory of real and personal estate, amounting to the sum of $714; and on the 9th day of October, 1820, an inventory of demands, claims, and debts due, by sundry persons, to the estate, amounting to the sum of $3,475 72, and a list of debts due and owing by the said intestate amounting to the sum of $6,707 58. That the real estate mentioned in said inventory consisted of the following described premises, to wit: House and land in Broad street, in the city of Boston, numbered 151 and 153, bounded and described as follows, viz: beginning at a point in the northeast corner of said street, running easterly, and bounded northeasterly on said street eighteen feet; then southeasterly forty-four feet to land now or late of Windell; then westerly twenty-eight feet; then southwesterly on stone wall forty feet; then running easterly on passage-way, there measuring fifteen feet; and from thence to the house now or late of W. B. Bradford, by the middle of the wall fifty-seven feet to said street, with all the privileges and bounds in deed recorded with Suffolk deeds, lib. 249, f. 246; said house being numbered 151 and 153 on said street, subject to a mortgage made by the said Daniel Badger, deceased, to Uriah Cotting, by deed dated the 1st day of November, 1815, to secure the payment to him of $5,500, in annual instalments, the last payment to be made in six years from the date thereof, upon which mortgage there was due and payable at the decease of said Daniel $3,000 and upwards, appraised on the 18th day of October, 1819, at the sum of $4,000.

Also, house and land in North Federal court, then so called, in said city, bounded and described as follows, viz: northerly on Mill creek fourteen feet and six inches; northwesterly on land formerly owned by John Harvey thirty-four feet; southwesterly on Link alley, so called, fourteen feet and ten inches; southeasterly on land now or formerly of David Jones, thirty-six feet and six inches, appraised as aforesaid at $1,200.

Also, one undivided half part of house and land in Distil-House square, then so called, in said city, of which partition was afterwards made, and the following portion, bounded and described as follows, was set off to the heirs of said Daniel, viz: beginning in front on the public street in said square, there measuring sixty feet, more or less; northwesterly on land now or late of the heirs of Jacob Tidd, deceased, there measuring sixty-two feet and two inches; northeasterly on land set off to Jonathan Heath, and there measuring sixty-four feet and six inches; then turning and running southerly, bounding easterly on land of the heirs of Elijah Uttley, deceased, twenty-four feet and two inches; then turning at right angles and running easterly two feet one inch and one half; then turning again at right angles and running southerly to Distil-House square, thirty-eight feet, subject to a mort-
gage to Jesse Farmer, made by said Daniel, deceased, by his
3 deed dated the —— day of ——, A. D., 1814, to secure the

payment to him of $1,200, on or before the 26th day of April, 1815, which was due and payable at the decease of said Daniel, appraised as aforesaid at $2,500.

Also, a house and land in Lynde street, in said city of Boston, subject to a mortgage to the Second Baptist church, to secure the payment of $450 dollars in two years and eight months after the 22d day of October, 1817, appraised as aforesaid at the sum of $2,000.

Also, house and land in Cambridgeport, appraised as aforesaid at $1,000.

Also, one other house in Cambridgeport, appraised as aforesaid at $500.

Also, shop and land on Parkman's wharf, then so called, in said Boston, appraised as aforesaid at $1,000.

Also, house and land in Lynn, appraised as aforesaid at $100.

That on or about the 25th day of September, 1820, the administrators filed their first account, in which it was alleged that they had received the sum of $6,742 04, and expended the sum of $6,475 52, leaving a balance in their hands of $266 52.

That on or about the 9th day of October, 1820, they petitioned said court for leave to sell so much of the real estate of the deceased as would raise the sum of $6,451 83, and on the 13th day of November, 1820, they were empowered to sell so much of the said estate as would raise the sum of $6,511 37.

That pursuant thereto they sold the house and land in Lynde street for $2,000; land and store on "Green's" wharf, described in the inventory as "Parkman's wharf," for $955.

Also, one twenty-fourth of house and land in Fleet street for $80.

Also, house and land in Cambridgeport for $600.

That, on about the 14th day of December, 1820, the mortgage due on the estate in Lynde street was discharged; and on or about the 19th day of the same month the mortgage on the estate in Distil-House square was discharged; and on or about the 21st day of April, 1831, the mortgage on the estate in Broad street was discharged; and the balance then due thereon, being $2,120, then paid, and the amount of said several mortgages was charged in the several accounts rendered by the administrators.

That on the 12th day of March, 1827, the said widow, Ann Badger, petitioned the said judge of probate that her dower in the premises be set off to her; and on the 6th day of April thereafter the real estate of the said intestate, in which she was entitled to dower, was duly appraised as follows, to wit: a shop and land on Parkman's wharf at $955. House and land in Cambridgeport, $1,600. One other house and land in Cambridgeport, $600. House and land in Lynn, $100. One undivided half part of the house and land in Distil-House square, $5,000. House and land in Lynde street, 2,000. One undivided twenty-fourth part of estate in Fleet street, $100. House and land in Broad street, $4,000, and house and land in North Federal court, $1,177 50, amounting to $15,532 50; and the estates in Broad street and North Federal court were duly assigned to her during her life, in full for her dower.

4

That on or about the 17th day of September, 1827, the said administrators filed their second account, in which they charged themselves with the proceeds of the sale of real estate, as aforesaid, and other sums, amounting to $4,354 02, and claimed credit for the sum of $6,810 35, for money falsely alleged to have been expended and advanced on account of said estate, and for $1,309 for services alleged to have been rendered by the said Daniel B. Badger, as administrator in settling said estate, and falsely claiming that there was then due to him, the said Daniel B., as administrator, a balance of about $2,456 33. That he, at or about the same time, filed in the said probate court a further list of debts falsely alleged to be due from said estate, amounting to the sum of $2,220,—$1,000 being on a note for that amount, dated Nov. 1, 1815, payable in five years after date, and $1,000 on a note for that same date, Nov. 1, 1815, payable in six years after date, with interest on the same, being $120.

That said second account was false and fraudulent; that there was nothing due from the estate to the said administrators, to the said Daniel B., to the holder of said notes, or to any person or persons whatever, for which the estate of the said deceased was bound or in any way liable.

But that the said balance was claimed, and said list of debts filed by the said Daniel B., in violation of his trust and duty in the premises, and to enable the said Daniel B. to obtain possession for his own use and benefit, and to the wrong and injury of his co-heirs, all the remaining real estate situated in said Boston, to wit: the estate known as the house and land in Distil-House square, the house and land in North Federal court, and the house and land in Broad street, as hereinafter set forth. And the more effectually to accomplish the said fraudulent design, he, on or about the first Tuesday of March, A. D. 1830, petitioned the supreme judicial court for the county of Suffolk for leave to sell the aforesaid estates, falsely representing and alleging that there then remained unpaid, of just debts and charges for administration, the sum of $4,676 33, and that there was no personal estate to discharge the same, and that it was necessary that the real estate then remaining undisposed of be sold to pay the same, and prayed to be empowered to sell so much thereof as would be sufficient to pay said sum; that such proceedings were had upon said petition that said supreme judicial court ordered that the administrators be empowered to sell so much of the real estate of said Daniel Badger, deceased, as would raise the sum of $4,676 33, and $50 for incidental charges.

And your orators would further represent that said order and authority was procured by falsehood, deception, and fraud. That the said Thomas Richardson and Ann J., his wife, and also said Jacob Badger, for himself and as guardian of said Augustus H., appeared in said court by their respective attorneys and objected to the granting of the prayer thereof. That on or about the fifth day of May the said Thomas Richardson and Ann J. released and conveyed to the said Daniel B., in consideration of a large sum to them then paid by said Daniel B., all their right, title, and interest

in and to said estate, and thereupon waived all objection, and expressed their consent, in writing, to the granting of the prayer of said petition.

That on or about the 15th day of June, of the same term of said court, the said Jacob Badger released and conveyed to said Daniel B., in consideration of a large sum to him then paid by the said Daniel B., all his right, title, and interest in and to the estates in Broad street, and North Federal court, and at the same time, pursuant to agreement and understanding between the said Jacob and said Daniel B., and in consideration of the payment as aforesaid, did waive all objection, and did consent, in writing, to the granting of the prayer of said petition.

That said Daniel B. procured the consent of the said Almira to the granting of the prayer of said petition by falsehood and deception, and that he, through falsehood and deception, procured the signature of the said Ann Badger to various papers which he fraudulently used and employed in the court of probate aforesaid, and in the said supreme judicial court, by means whereof, and of the false representations and fraudulent acts and doings, the authority to sell said estates was granted as aforesaid.

And your orators would further represent that, in further pursuance of the aforesaid fraudulent design, the estate described as the house and land in Distil-House square was advertised to be sold in Boston by public auction, on the 20th day of July, 1830, at 11 o'clock in the forenoon, without giving any notice whatever of the place at which said sale was to be made. That he, the said Daniel B., procured one Wm. P. Hart to attend said sale, and bid off said estate for him, the said Daniel B., and that the same was struck off to the said Hart on his bid of $2,820, a sum greatly less than the value of said premises, and a little over one-half of what it had been appraised at by the commissioners appointed by the judge of probate, in the matter of the assignment of dower as aforesaid.

And that said Hart, pursuant to the agreement and understanding previously made and had with the said Daniel B., took a conveyance of said premises from said administrators on or about the 28th day of March, 1831, to himself, without paying anything therefor, and at or about the same time conveyed said premises to said Daniel B. without any consideration, and without receiving anything except for his fraudulent services in the premises.

And your orators would further represent that, in further prosecution of the fraudulent design aforesaid, some time in the month of January, 1831, the said Daniel B. caused to be advertised for sale at public auction, on the 5th of February thereafter, so much of
6 the real estate situated in Broad street and North Federal court, subject to the life estate of the said widow, as would raise the sum of $786, for payment of alleged debts and incidental charges, and procured said Hart to attend said sales and bid off said property for him. That the estate situated in North Federal court was offered for sale first; that there were several bidders and much competition, and that said Hart bid thereon under directions and instructions from

the said Daniel B., but that the estate was struck off to one Adin Hall for $400.

That the estate in Broad street was then put up for sale, or so much of it as would raise the sum of $386, and that said Hart bid that sum for the whole, but after some competition among those present, an undivided portion of the same, much less than one-fifth part thereof, was struck off to said Hart for that sum.

And your orators would further represent that shortly after the sales aforesaid, and some time previous to the 12th day of March, 1831, the said Daniel B. pretended to offer the said estates again for sale at public auction, but without any previous legal notice thereof; and on or about the 12th day of March he procured, as aforesaid, said Wm. P. Hart to attend such pretended sale and bid off the said house and land situated in Broad street, for his the said Daniel B.'s use and benefit; and that the said Hart did, pursuant to the said fraudulent procurement, bid thereon the sum of $636, and that the said estate was struck off to him for that sum, being less than one-half of the value of the premises subject to the incumbrances thereon.

That on or about the 28th day of said March the said administrators conveyed the said premises to the said Hart without receiving from said Hart anything therefor, and at or about the same time the said Hart conveyed the same to the said Daniel B., without any other consideration than what was paid to him by said Daniel B. for his fraudulent services in the premises.

And your orators would further represent that, in pursuance of the fraudulent design aforesaid, the said Daniel B. procured one Daniel Gillpatrick to attend such pretended sale, and to bid off the said house and land in North Federal court for his said Daniel B.'s use and benefit. That said Gillpatrick, pursuant to said procurement, did attend said pretended sale, and on the 12th day of March aforesaid, on the same day of the aforementioned pretended sale of said premises in Broad street, but about an hour previous thereto, and did bid for the same the sum of $150, and it was accordingly struck off to him for that sum, being greatly less than the value of the premises, subject to the incumbrances aforesaid.

That on or about the 29th day of said March the said administrators conveyed said premises to said Gillpatrick, without receiving anything from him therefor; and at or about the same time, and pursuant to the agreement and understanding previously made and had with the said Daniel B., the said Gillpatrick conveyed the said premises to him, the said Daniel B., without any consideration therefor.

7 And your orators would further represent that on or about the 25th day of November, 1828, the said David J. conveyed to said Daniel B. his interest in the estates situated in Broad street and North Federal court.

And your orators would further represent that, by a resolve of the board of aldermen of the city of Boston, the whole of the estate mentioned and described as the house and land in North Federal court was taken to lay out Blackstone street; and, in consideration thereof, the said city paid to the said widow a certain sum annually, during

her lifetime, as compensation for the damage sustained by her in the premises; and on the 26th day of September, A. D. 1836, it was ordered by the said mayor and aldermen that the city should pay the owners of the remainder of the said estate the sum of $1,500 for damages sustained by them in the premises.

That on or about the 24th day of September, A. D. 1855, the said Ann Badger died; and on or about the 27th day of November thereafter the said Daniel B. petitioned the mayor and aldermen for compensation for damages sustained by the aforesaid owners, and for an appraisal thereof, alleging that the *ex parte* valuation made by order of the city, in 1836, as aforesaid, was an under valuation; and that for other reasons, mentioned in said petition, the owners were not bound thereby; that such proceedings were had thereon that, on the 3d day of January, A. D. 1856, it was ordered that the sum of $2,500 be paid to the said Daniel B. as compensation, as prayed for.

That on or about the 5th day of said January, in consideration of said sum of $2,500, paid to him by the said city, he did, by his deed of that date, give, grant, bargain, sell and convey to the said city, in fee simple for ever, the said premises so taken as aforesaid; that before said payment was made by the said city to said Daniel B., and before the delivery of the deed of said premises, the said city was duly notified of the acts and doings of the said Daniel B., as hereinbefore recited; and that your orator and his co-heirs as aforesaid, claimed to be the lawful owners of said land and premises, in common with the said Daniel B., and requested the agents and attorneys of said city to pay to your orator and his co-heirs, the proportion of the said sum of $2,500 to which they were as such entitled, but the said city wholly refused to pay them their portions, or any part thereof.

And your orators would further represent, that on the 1st day of July, A. D. 1854, the said Daniel B. conveyed the house and land in Distil-House square aforesaid, in mortgage to Samuel D. Parker, esquire, one of the said defendants, nominally to secure the payment of $6,000 in three years thereafter.

That said Daniel B., on the 14th day of February, A. D. 1855, conveyed the Broad street estate to the said Parker in mortgage, nominally to secure the payment of $1,000 in three years thereafter; but your orators believe, and charge the same to be true, that said conveyances were made without any consideration whatever.

8 That, at the time of the aforesaid conveyances, the said Parker was, and had been, for a long time previous, of counsel and attorney of the said Daniel B., and well knew the acts and doings of the said Daniel B., as aforesaid, and that he was not possessed of any beneficial interest in the estates so conveyed to him, the said Parker, beyond 4-10ths of the last-mentioned estate, and 1-10th of the former, being the interest acquired by him as one of the heirs of the said intestate, and by purchase of three of his co-heirs, as hereinbefore set forth. And that said mortgages are null and void, so far as the same relate to the respective interests of your orators in the said premises.

Whereby, and by reason of the aforesaid premises, and of the acts

and doings of the said Daniel B., all of which were with the knowledge and consent of the said Joseph, he entered upon and became possessed of the aforesaid estate in Distil-House square, and of the rents and profits thereof, in trust for the said James W., David J., Augustus H., Almira A., Jacob, Mary H. B., Eliza M., and Alfred C., each 1-10th thereof.

And by reason aforesaid he entered upon and became possessed of the estates in Broad street and North Federal court, and the rents and profits thereof, in trust for the said James W., Augustus H., Almira A., Mary H. B., Eliza M., Jacob, and Alfred C.

And your orators would further represent that on or about the 11th day of June last past, and pursuant to an agreement made a long time before, the said Augustus H., Almira A., Mary H. B., Eliza M., Jacob, and the said Alfred C., sold, assigned, transferred, set over and conveyed unto your orator, the said James W., all their right, title, and interest, in and to the foregoing estates, and the rents, profits and proceeds thereof; whereby he duly became possessed of the same, and all their right, title and interest in and to the same, both at law and in equity.

And your orators would further represent that the fraudulent acts and doings of the said Daniel B. were unknown to them or to their co-heirs, until within five years last past; and as soon as the discovery thereof, they requested the said Daniel B. to account with them, and pay over to them their respective proportions of the money received by the said Daniel B., as hereinbefore set forth; and also to convey to them, by good and sufficient deeds, their respective interests in the said estates, discharged of the aforesaid mortgages, and offered to pay him whatever sum he might be equitably entitled to by reason of advances or otherwise; and your orators well hoped that he would have complied with such reasonable requests, as in justice and equity he ought to have done.

But now, so it is, may it please your honors, that the said Daniel B. absolutely refuses to comply with your orators' reasonable request; and the said Samuel D. refuses to release and discharge the mortgages aforesaid.

9 To the end, therefore, that the said defendants may, if they can, show cause why your orators should not have the relief hereby prayed, and that the said Daniel B. may, upon his corporal oath, and may, according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to all and singular the premises, and the same as though he were particularly interrogated thereto; and that the said Parker, and the said Joseph, and the said city of Boston may severally answer as aforesaid, and to so much of the aforesaid as relates to the acts and doings of each of them severally in the premises, and no more.

And that the said defendant, Daniel B. Badger, may come to a just account of the rents and profits received by him, or any person on his account, or which might have been so received on account of the estates aforesaid.

And that the deeds of conveyance by the administrators to the said William P. Hart, and to the said Daniel Gillpatrick, may be declared to be null and void.

And that the said Daniel B. may be ordered to convey to your orators, by good and sufficient deeds, free from all incumbrances, their respective interests in the estates aforesaid, situated in Distil-House square, and in Broad street, and in North Federal court, now lying in Broad street, and that he may be ordered to pay over to your orators their respective proportions of whatever sum he may or might have received as rents and profits of said estates, on account thereof.

And that the deed from said Daniel B. to the said city of Boston may also be declared and decreed to be null and void, or that the said city be ordered and decreed to pay over to your orators their respective proportions of the sum of $2,500, allowed as damages as aforesaid, with interest thereon, or such sum as they may be equitably entitled to on account of the taking of the land and premises in said deed described, and for such other and further relief in the premises as in justice and equity may to your honors seem meet, and the nature of the case requires.

May it please your honors to grant unto your orators a writ of subpœna of the United States of America, to be directed to the said Daniel B. Badger, the said Joseph Badger, the said Samuel D. Parker, and the said city of Boston, commanding them and each of them, on a certain day, and under a certain penalty, to be and appear before your honors in this honorable court, and then and there to answer the premises as hereinbefore required, and to stand to, perform and abide such order and decree therein as to your honors shall seem meet, and as in duty bound shall ever pray, &c.

JAMES W. BADGER.
DAVID J. BADGER.
By JAMES B. ROBB,
Their Attorney.

ROBB & HUNTINGTON, *of Counsel.*

This bill of complaint was entered at the May term of this court, A. D. 1858, and on the eighteenth day of September, A. D. 1858, the said defendants appear, when and where, &c. And more, that the same be dismissed, and that the said solicitors of the complainants show their authority to appear for David J. Badger, one of the complainants named therein; and afterwards (to wit, Oct. 4, 1862) the said solicitors of the complainants move this honorable court for leave to amend their said bill, by striking out the name of said David J. Badger as a party complainant, wherever it appears in said bill. And it is ordered by the court that the name of said David J. Badger be stricken out of said bill as a party complainant, and the said bill be amended accordingly.

The cause was thence continued to the October term of this court A. D. 1858.

And on the first day of November, A. D. 1858, the following answer of Joseph Badger was filed:

JAMES W. BADGER *& als.*
vs.
DANIEL B. BADGER *& als.*

The several answer of Joseph Badger, one of the respondents named in the said complainant's bill.

And this defendant, not waiving an exception to the manifold errors and imperfections of the complainant's said bill, in answer to so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, saith:

This defendant admits that he was appointed and served jointly with Daniel B. Badger, one of the persons named as a respondent in the complainant's said bill, as the administrator of the estate of Daniel Badger, deceased, who was the brother of this defendant, but this defendant at this great distance of time does not recollect the precise date of said appointment, and cannot admit the same as stated in the complainant's bill, and prays that he may be required to make proof of the same, if the same is in any way material. This defendant further answering, admits that he, jointly with his co-administrator, did, from time to time, render into the probate court for the county of Suffolk, accounts of administration, and also lists of debts due from said intestate's estate, but this defendant is now unable to recollect whether said accounts are truly stated in said complainant's bill, and cannot admit the same, and he prays that said complainant, if the same are in any way material, may be required to produce said original accounts, or true copies thereof, upon the hearing of this cause. But this defendant upon his personal knowledge denies that said accounts or lists of debts, or either of them, were false, or were rendered and filed in said probate court with any fraudulent motive, design, or purpose whatever, but because
11 the same were correct, and because it was the duty of said administrators to render the same. And this defendant, to the best of his knowledge, information, and belief, denies that said accounts or either of them falsely, or fraudulently, or incorrectly, charged a balance as due from said estate to said Daniel B. Badger, and answering, says that, to the best of his knowledge, information, and belief, each and every one of said accounts was correct in that particular and in all others. And this defendant further answering, admits that said administrators did obtain leave to sell the real estate of said intestate for the payment of debts due from said estate, and did sell the several estates mentioned in the complainant's said bill, in pursuance of said order and license, but this defendant is not now able to recollect or to state the dates of said petition, license, and sales, severally, as stated in the complainant's bill, and cannot admit the same, and he prays that the complainant may be required to produce proof thereof, so far as the same may be material. And this defendant, upon his personal knowledge, denies that said license was procured for the fraudulent purpose of enabling the said Daniel B. Badger to get possession of said estates, or any of them, to his own use and benefit, or that any fraud, misrepresentation, or im-

proper means whatever, were employed by this respondent, and to the best of his knowledge, information, and belief, that none were employed by the said Daniel B. to induce any person or persons to assent to said petition, or to the sale of said estates or either of them. And this defendant denies that he ever had any knowledge that said Daniel B. Badger had any fraudulent or improper design or purpose in reference to said estates, or was guilty of any fraud, misrepresentation, or misconduct, in reference to the sales thereof, and this defendant, to the best of his knowledge, information, and belief, denies that said Daniel B. did entertain any such improper design, or was guilty of any fraudulent or improper conduct as aforesaid. And this defendant denies that the time and place for the sale of said several estates were not duly notified, or that said estates were not sold at the times advertised respectively for said sales, but this defendant, further answering, says that, to the best of his knowledge, recollection, and belief, the times and places for selling said estates were duly advertised, and the same were sold in pursuance thereof, except as hereinafter stated.

And this defendant further answering, says that the estate known as the North Federal court was advertised for sale, and was sold and bid off by one Adin Hall, as stated in said bill, but the sum at which the same was bid off by him this defendant does not now recollect. And this defendant further answering, says that he was informed that said Hall bid off the same for the said Ann Badger, but the said Hall and the said Ann Badger wholly refused to take said estate, or to pay for the same, and said administrators were obliged to advertise and sell said estate again. And this defendant further answering, says that, according to the best of his knowledge, recollection, and belief, neither one-fifth part, nor any part,
12 of said Broad street estate was put up for sale at the time when said estate was first advertised for sale, and this defendant at this distance of time cannot recollect particularly why said estate was not then sold, and he knows of no reason, unless it was because it was hoped that said estate might realize a higher price at a future sale.

And this defendant admits that said estate was subsequently advertised and sold to one William P. Hart, who was the highest bidder therefor. And this defendant denies that the several estates in the said bill mentioned were struck off at prices much less than their real value, and says that, according to the best of his recollection and belief, the said prices were fair, and were so considered at the time of said sales. As to whether the said Hart and the said Daniel Gillpatrick attended said sales respectively, and bid off said estates for the use and benefit of said Daniel B. Badger, under a previous agreement or understanding with said Daniel B., this defendant has no personal knowledge, but, to the best of this defendant's information and belief, each and every one of said allegations is untrue, and so this defendant denies the same.

And this defendant admits that said administrators did make conveyances of said estate to said Hart and Gillpatrick respectively, as

charged in said bill, but this defendant denies that said conveyances were made without consideration, and this defendant avers that the same were made upon the considerations named in said deeds respectively, and the said administrators did charge themselves in their account to said estate for the same.

And this defendant further answering, says that the sales of said estate aforesaid were made under the license of the Supreme Court as aforesaid, and the same were conducted in good faith; and said estates were sold and conveyed to the persons who were the highest bidders therefor, and for the considerations named in their respective deeds ;and this defendant denies each and every allegation in the complainant's bill contained to the contrary hereof. And this defendant, upon his personal knowledge, denies that he ever knew of, or consented to, any fraudulent acts or doings of the said Daniel B. Badger, in reference to his dealings as administrator, or to the sale of said estates, as in said bill is most unjustly alleged against him; and he further answers and says, that, to the best of his knowledge, information, and belief, the said Daniel B. Badger is wholly innocent of the said fraudulent acts and doings in the complainant's bill alleged against him.

And this defendant denies all manner of unlawful combination and confederacy wherewith he is by the said bill charged—without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, or denied, is true to the knowledge or belief of this defendant. All which matters
13 and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH BADGER.

E. MERWIN,
Solicitor, and of Counsel.

MASS. DISTRICT, *Nov.* 1, 1858.

Then personally appeared the said Joseph Badger, and made oath that he has had read to him the foregoing answer by him subscribed; that he understands the contents thereof; that the same are true so far as they are stated upon his personal knowledge, and so far as stated upon information and belief, he believes them to be true.

Before me,

C. P. CURTIS, JR.,
U. S. Com'r.

The answer of Samuel D. Parker was also filed November
14 1, 1858, as follows:

JAMES W. BADGER *& als.*
vs.
DANIEL B. BADGER *& als.*

The answer of Samuel D. Parker, one of the defendants to the bill of complaint of the said complainants.

This defendant now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections, and insufficiencies, in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as he, this defendant, is advised is material for him, this defendant, to make answer unto, he, this defendant, answering, saith:

That he is a stranger to all the matters and things, proceedings and acts, alleged in the said bill to have taken place before the twenty-fourth day of November, in the year of our Lord eighteen hundred and fifty-five, and that he was not at any time of counsel or attorney of said Daniel B. Badger, nor of said Joseph Badger, in any of their proceedings and acts as administrators in the settlement of the estate of said Daniel Badger, deceased, and had and has no knowledge of their acts and doings, as alleged in said bill, and therefore leaves the complainants to make such proof thereof as they may be able.

And this defendant further answering, denies all manner of fraud and fraudulent acts, and all manner of unlawful combination and confederacy in the said bill of complaint of said complainants unjustly alleged and charged.

And this defendant further answering, saith that, prior to the first day of May, in the year of our Lord eighteen hundred and fifty-four, he had been employed by Daniel B. Badger as attorney and counsellor-at-law in some lawsuits and professional services, in no way or manner connected with or relating to any of the matters or things mentioned in the complainant's said bill of complaint, and in no way or manner connected with or relating to the estate of said Daniel Badger, deceased, and in no way or manner connected with or related to any of the acts, proceedings, or doings, of said Daniel B. Badger, or of said Joseph Badger, as administrators of the estate of said Daniel Badger, deceased, and in no way or manner connected with or relating to any title, interest, or estate, of said Daniel B. Badger as heir of his father, the said Daniel Badger, deceased, or as purchaser of any estate, real or personal, which belonged to the estate of said Daniel Badger, deceased, and on the said first day of May, in said year of our Lord eighteen hundred and fifty, said Daniel B. Badger was indebted to this defendant for said professional services, and for money loaned by this defendant to him, in the sum of twelve hundred dollars, and offered this defendant his note therefor, dated May 1, 1850, payable in three years with interest payable semi-annually, and a mortgage deed as collat-

eral security therefor on the brick house and land then occupied by said Daniel B. Badger and his tenants, and in which said Daniel B. Badger occupied a shop for the sale of merchandise, being situated in Broad street, said house being numbered 151 and 153 on said Broad street, in said Boston; and this defendant employed J. Mason Parker, esquire, an attorney-at-law, to investigate and report upon the title of said Badger thereto, who reported to this defendant that said title of said Daniel B. Badger thereto was good, and thereupon this defendant accepted said note and deed of mortgage in payment for the money loaned as aforesaid, and said Daniel B. Badger's indebtedness to him as aforesaid, and said deed of mortgage, is duly recorded among Suffolk deeds, lib. 610, fol. 248, and this defendant still holds said note and mortgage, and the same hath never been paid or discharged, and the money, note, and debt, thereby secured, are still due, lawfully and justly due, and owing to this defendant; and this defendant wholly denies that no consideration was given or paid for said note and mortgage, and avers the contrary thereof, and wholly denies there was any fraud or fraudulent intent, design, or act, in making, giving, and receiving said note and mortgage as aforesaid.

And this defendant, further answering, saith he never heard, suspected, or knew that these complainants, or any other person or persons claimed, or pretended to claim, any right, title, interest, or estate in the aforesaid mortgaged estate, or any other real or personal estate which ever belonged to the estate of said Daniel Badger, deceased, or any part thereof, or controverted, or disputed, or denied said Daniel B. Badger's title thereto, before, on, or about the twenty-third day of January, in the year of our Lord eighteen hundred and fifty-six, and then the information came from or through Ambrose A. Ranney, esquire, the city solicitor of the city of Boston, who gave notice to said Daniel B. Badger that there were some claimants who claimed to be the owners of part of the money
16 which the city was about to pay to said Daniel B. Badger on his petition mentioned in said bill, and requested a bond of indemnity to be given by said Daniel B. Badger to indemnify said city against the claims of those other claimants; and this defendant denies that he had before said twenty-third day of January, in the year of our Lord eighteen hundred and fifty-six, any information, knowledge, belief, or suspicion, that these claimants or any other persons controverted, impugned, or denied the right and title of said Daniel B. Badger to the whole of the estate, real and personal, mentioned as claimed in part by these complainants in their said bill of complaint, or mortgaged or conveyed to him as alleged in said bill.

And this defendant, further answering, said that on the first day of July, in the year of our Lord eighteen hundred and fifty-four, he had in his hands to put out, and loaned on interest for them, the sum of six thousand dollars, as guardian of Emily Greenough, Chas. Greenough and Alfred Greenough, minors, children and heirs-at-law of Alfred Greenough, late of said Boston, merchant, deceased, and that said Daniel B. Badger applied to him to loan it to him on his

note, secured by a mortgage both on the land, estate, and buildings situated in Distil-House square, in said Boston, mentioned in said complainants' bill of complaint, and also on the aforesaid estate in Broad street; and this defendant loaned said sum of six thousand dollars, as guardian as aforesaid, to said Badger, and took his promissory note therefor, secured by a mortgage on said Distil-House square land and said Broad street land, which is recorded with Suffolk deeds, (lib. 666, fol. 131,) and hath never been paid and never discharged, and is justly due to this defendant in his capacity as guardian; and said mortgage was made for a full, adequate, and valuable consideration, and with no fraudulent intent or design, and said defendant denies all manner of fraud in said transaction, and fully and perfectly believed said Daniel B. Badger's title, after investigation, to be good and perfect to the whole land mortgaged as aforesaid.

And this defendant, further answering, saith that afterwards, on the fourteenth day of February, in the year of our Lord eighteen hundred and fifty-five, said Daniel B. Badger being justly indebted unto him in another sum of one thousand dollars for money loaned and other valuable considerations, he gave to this defendant his note therefor, secured by another mortgage on said Broad street estate, which is recorded among Suffold deeds, (lib. 676, f. 157,) and has never been paid or discharged, and still is lawfully and justly due to this defendant. And this defendant denies all manner of fraud and fraudulent intent, combination or fraud in all the three loans, notes, and mortgages aforesaid, and he avers the contrary thereof; and he also avers that at all and each of the times of those several transactions he had no information, suspicion, knowledge, or belief that

17 said Daniel B. Badger's title was not perfect and complete in the mortgaged premises in whole and in every part and parcel thereof; and he had then, and at each of those times and dates, never heard, suspected, been informed, knew or believed that any person or persons whatever claimed or pretended to claim any part or parcel thereof, or denied or impugned the title of said Daniel B. Badger to the whole and every part thereof. And this defendant, upon his personal knowledge, denies all manner of combination and confederacy, and all fraud, and all fraudulent acts, wherein he is by the said bill charged with, or any other matter, cause, or thing in the said complaint and bill of complaints contained, material or necessary for this defendant to make answer unto, and he avers the contrary thereof to be true; and as to all things in said bill contained concerning this defendant and the premises hereinbefore stated, this defendant is ready and willing to answer, maintain, and prove to your honors, as may be necessary or required, and when and where required.

And this defendant humbly prays that he may be discharged from further proceedings in the premises, and be allowed his reasonable costs in this case most wrongly incurred.

SAMUEL D. PARKER,
Counsellor-at-law in this case, acting for himself.

Nov. 1, 1858.

Circuit court U. S., Mass. district.

Nov. 1, 1858.

Personally appeared the above-named Samuel D. Parker, and made oath that he had read the foregoing answer, by him signed, and knows the contents thereof, and that the same are true so far as stated of his own knowledge, and so far as stated upon his information and belief he believes the same to be true.

Before me.

H. W. FULLER, *Clerk.*

18 The case was thence continued from term to term to the May term, 1861; and on the twenty-eighth day of January, 1861, the following bill, in the nature of a bill of revivor, was filed:

JAMES W. BADGER
vs.
DANIEL B. BADGER *& als.*

To the honorable the justices of the circuit court of the United States within and for said district:

James W. Badger, of the city, county, and State of New York, and a citizen of said State, brings this his bill, in the nature of a bill of revivor, against Erastus Bethoven Badger, of the city of Boston, county of Suffolk, commonwealth of Massachusetts, and a citizen of said commonwealth.

And thereupon your orator complains and says that, on or about the ——— day of———, he exhibited his original bill in this honorable court, against Daniel B. Badger, of said city of Boston; Samuel D. Parker, of said Boston; Joseph Badger, of Milton, county of Norfolk, commonwealth aforesaid, and the city of Boston, a municipal corporation, established in and by the laws of said commonwealth of Massachusetts, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying that the said Daniel B. Badger might come to a just account of the rents and profits received by him or any person on his account, or which might have been so received on account of the several estates in said bill mentioned.

And that the deeds of conveyance by the administrators therein mentioned to Wm. P. Hart and Daniel Gilpatrick might be declared null and void; and that the said Daniel B. might be ordered to convey to your orator the estates therein mentioned, and pay
19 over to your orator the proportion of the rents and profits of said estates to which he might be entitled; and that a certain deed to the said city, set forth and described in said bill, might be deemed null and void, and that the said city be ordered to pay over to your orator his proportion of the sum of $2,500 allowed by said city for damages for the taking of the land mentioned and described in said deed for the purposes of said city, and for such other and further relief as the nature of the case might seem to require.

And your orator further shows that said several defendants were duly served with process of subpœna and appeared thereto, and that the said Daniel B. departed this life on or about the ——— day of ——— last, without having put in his answer to said bill.

And your orator shows unto your honors, by way of supplement to said bill, that said Daniel B., by his last will, devised and bequeathed all of his estate, both real and personal, to the said Erastus B. Badger, who was his son and only heir, and named the said Erastus B. to be his sole executor. That on or about the 2d day of June last the said will was duly proved, and letters testamentary were duly granted to the said Erastus B., and he thereby became and now is his legal personal representative.

And your orator further shows that said suit and proceedings have become abated as to the said Daniel B. by his death, and your orator is advised that he is entitled to have the same revived against the said Erastus B., and to have the said cause put in the same state and condition as the same was previously to the death of the said Daniel B.

To the end, therefore, that the said defendant may answer the premises, and that the said suit and proceedings may stand revived, or that the said defendant may show good cause to the contrary—

May it please your honors to grant unto your orator a writ of subpœna to revive and answer, issuing out of this honorable court, to be directed to the said Erastus B. Badger, thereby commanding him at a certain day personally to appear before this honorable court, then and there to show cause, if he can, why the said suit and proceedings should not be revived against him, and that he may answer the premises; and further, to stand to and abide such order and decree therein as to your honors shall seem meet.

JAMES W. BADGER,
By JAMES B. ROBB,
His Attorney.
JAMES B. ROBB,
Of Counsel.

20 And on the eleventh day of March, A. D. 1861, was filed the answer of Erastus B. Badger, as follows :

JAMES W. BADGER
vs.
ERASTUS B. BADGER *& als.*

The several answer of Erastus B. Badger to the bill of complaint and to the bill of revivor and supplement of the said Jas. W. Badger.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit of exception to the many errors and uncertainties in the said bill of complaint contained, for answer thereunto, or unto s › much thereof as this defendant is advised is material or necessary for him to make answer unto, answering, saith :

This respondent, upon information and belief, admits that Daniel Badger did decease, leaving the heirs-at-law and the real estate set

forth in said bill, and that said Daniel B. and Joseph Badger, the uncle of said Daniel B., and brother of said intestate, were appointed administrators of his estate, but this respondent is informed and believes that they undertook said administration reluctantly, and at the urgent request of said Ann Badger, the widow of said intestate.

This respondent is informed and believes that said administrators did duly return inventories of the real and personal estate of said estate, but he does not know whether the complainant has correctly set forth the same in his bill, and prays that he may be required to make due proof thereof, if the same be material.

That whether said administrators obtained leave to sell any real estate on the 13th November, A. D. 1820, or whether they did sell the land in Lynde street and Parkman's wharf, and the premises in Fleet street, and in Cambridgeport, and whether certain mortgages on Lynde street, and Distil-House square, and Broad street, were severally discharged, as in said bill is alleged, and
21 whether said administrators did file their first account on or about the 20th September, A. D. 1820, as in said bill is alleged, this respondent has no personal knowledge, but is informed and believes said allegations to be true, but for the greater certainty he prays that the complainant may be required to produce due proof thereof.

And this respondent admits that the said Ann Badger, widow of said intestate, did petition for assignment of her dower, and the same was set off to her, as in said bill is alleged.

And this respondent admits that said administrators did file their second account, but upon his information and belief he denies that the same contained any false charges, or credits, or balances whatsoever, but that the same was true and just in every particular, and the same was duly proved and allowed by said probate court. And this respondent gives this honorable court to be informed that said account was examined and approved by the said David J. Badger, Jacob Badger, Ann J. Badger, and also by the said Ann Badger, widow of said intestate, in her own right and as guardian of the remaining children of said intestate. And this respondent denies the right of said complainant to call in question the same. And this respondent craves that the complainant may be required to produce said account or a true copy thereof from the records of the said probate court, with the proceedings of said court thereon. And this respondent denies that the said Daniel B. at any time filed a second list of debts which was false in any particular, but he answers and informs this hon. court that said administrators did, on the said Sept. 17, 1827, produce under oath and file in said probate court a list of the debts then due and unpaid from said estate, amounting to the sum of two thousand two hundred and twenty dollars, and the same was examined and approved in writing by said widow and children of said intestate, to a true copy of which he begs leave to refer.

And this respondent, upon his information and belief, denies that said second account or said list of debts was filed by the said Daniel B. in violation of his duty and trust or to enable him to obtain possession of

the remaining real estate of said estate, as is alleged in said bill, *but* he answers and avers that said account and list were filed duly and properly by said administrators in the proper discharge of their duty, and because the same were just and accurate, and that the said Daniel B., as well as the said Joseph, his co-administrators, did act with the strictest honesty and fidelity to said estate.

And this respondent, upon his information and belief, denies that the said Daniel B. did, with the intent to unlawfully possess himself of said real estate, as in said bill is alleged, or with any fraudulent or improper motive or design whatever, make a petition to the supreme judicial court for the sale of said real estate, or that the allegations in said petition were false, or any of them in any particular, as in said bill is alleged.

And this defendant, further answering, gives this honorable court to be informed that, in truth and in fact, on said September 17,
22 1827, as has already been made to appear to your honors, there was due from said estate to said administrators the balance of $2,456 33, and there were also due debts then unpaid to the amount of $2,220, making the sum total of $4,763 33; that upon said day said Daniel B., jointly with his co-administrator, and not singly, as stated in said complainant's bill, did truly, according to the fact, and as he was in duty bound, and not falsely and fraudulently, as is most unjustly alleged in said complainant's bill, represent to the probate court for the county of Suffolk that said sums were due from and owing by said estate, for the payment of which a sale of real estate would be necessary, and did thereupon petition for leave to sell so much of the residue of the real estate of said intestate as would raise a sum sufficient for the payment of said debts, together with incidental charges; and that after due notice and a hearing the said probate court, to wit, on the 15th day of October, A. D. 1827, did grant to said administrators leave to sell the real estate aforesaid; that said administrators, with the sole desire to promote the best interests of the widow and heirs-at-law of said intestate, and acting in pursuance of their wishes, deferred making sale of said real estate under said license, because, as was then believed, by delaying such sale, a larger sum might be realized from said real estate, the price of real estate being then depressed, and because the estate known as the Distil-House square was then held in common with one Jonathan Heath, and was also under a lease of ten years to one Brigham, which had not then expired, which circumstances rendered a sale of the interest of said intestate therein very inexpedient; that subsequently partition having been made of the interest of said Heath, and of said intestate in said Distil-House square estate, as stated in the complainant's bill, and it appearing to said administrators that any longer reasonable postponement of such sale would not be of any benefit to said estate, and it being necessary that a final settlement of said estate should be made, said Daniel B. and his co-administrator, and not the said Daniel B. alone, as in said bill is falsely alleged, did present their petition to the supreme judicial court for the county of Suffolk, at the March term, 1830, setting forth the foregoing facts, and praying for a re-

newal of said license and for leave to sell said residue of real estate, or so much thereof as should be necessary for the purposes aforesaid; that after due notice and a hearing, and all due proceeding thereon, the said court did grant the prayer of said petition, and did authorize said administrators to make sale of said real estate as aforesaid. And this defendant gives your honors to be informed that the said Thomas Richardson and Ann, his wife, Almira A. Badger, Jacob Badger in his own right, and as the guardian of said Augustus H. Badger, and said Ann Badger in her own right, and as guardian of the remaining minor children of said intestate, did signify in writing their consent to said sale; and this defendant denies that said Daniel B. procured the assent aforesaid of the said Ann, Almira and Jacob,
23 or either of them, through any misrepresentation, falsehood, and deception whatever, as is most unjustly alleged in the complainant's bill, or that the said Daniel B. did purchase of said Jacob his consent to said petition, or did bribe him to give his consent thereto, either in his own right or as guardian to said minor children; or that said Daniel B. purchased of said Jacob for any "large sum," as in said bill is alleged, his interest in said estates; but that they gave it of their own free will and accord, and because, as they well knew, it was necessary and proper that such sale should take place. And this defendant, upon his information and belief, denies that the said Daniel B. procured the signature of the said Ann to any papers through falsehood and deception, as in said bill unjustly is alleged, or through any improper means or influence whatever. And this respondent answers and avers that the allegations in said bill contained of the fraudulent and false conduct, accounts, and statements of said Daniel B., hereinbefore answered, are vague, indefinite, and altogether insufficient, and he prays that he may have the benefits of this objection, the same as if he had pleaded the same or demurred to said bill.

And this respondent respectfully shows unto your honors that the orders, decrees and judgments of said probate court and supreme judicial court in said bill referred to, and hereinbefore set forth, were, respectively, the orders, decrees and judgments of courts having jurisdiction of the subject-matters thereof and of the parties thereto, and that the same were and are conclusive and binding upon all persons, and especially upon this complainant, and that it is not competent for him to open or review the same as he seeks to by this bill, and this respondent pleads said orders, decrees and judgments as conclusive upon said complainant as to all matters embraced in the same.

And this respondent denies that the advertisement of the sale of said Distil-House square estate omitted to give any notice or information of the place where said sale would take place, or that the said Daniel B., procured one Hart to bid off said estate for him, the said Daniel B., or that estate was sold for less than its then fair market value, or that, in pursuance of any understanding or agreement between said Daniel B. and said Hart previous to said auction sale, the said Hart received a conveyance of said premises from said admin-

istrators, or thereafter conveyed the same to the said Daniel B. without consideration except for the fraudulent services of said Hart, as in said bill most unjustly is alleged, or that, in prosecution of said alleged fraudulent design, said Daniel B. caused to be advertised, or procured said Hart to attend the auction sale of said Broad street and North Federal court estates, or that said Hart did then or any time bid at either of said sales under directions or instructions from said Daniel B., or in his behalf. But this respondent answers and avers that said Daniel B., jointly with his said co-administrator, did, in pursuance of the license and order of the supreme judicial court aforesaid, after due notice, cause to be sold the said Distil-House square to said W. P. Hart, who was the highest bidder thereof.

24 And the said administrator did make their deed of conveyance in pursuance of said sale, as they were bound to do, and said Daniel B. did thereafter purchase and receive a conveyance of said estate from the said Hart in good faith and without fraud, and not in pursuance of any agreement made between them, either before said auction sale or at any time, that the said Hart should nominally become the purchaser of said estate, but really for the benefit of said Badger, as is most unjustly alleged in said bill and this respondent is informed and believes, and so denies that any such agreement or understanding existed between them.

And this respondent, upon his information and belief, denies that the sale of said Broad street and North Federal court estates was made without due notice thereof, as is alleged in said bill, or that said Daniel B. did procure said Hart to attend the sale of said Broad street estate, and to purchase the same for the use and benefit of said Daniel B., or that the same was unlawfully or by any connivance struck off for less than its fair value, or that said administrators conveyed said premises to said Hart without any consideration therefor, or that said Hart subsequently conveyed the same to said Badger in pursuance of any fraudulent agreement made previously to said sale, or upon no consideration except for such alleged fraudulent services, or that the said Daniel B. procured one Daniel Gilpatrick to attend the sale of said North Federal court estate and to bid off the same for his benefit, or that said sale did take place about an hour or any time previous to the one appointed for said sale, or that said estate by any connivance, understanding or agreement of said Daniel B., was struck off for less than its fair value, or that said administrators conveyed said estate to said Gilpatrick without any consideration, or that Gilpatrick conveyed the same to the said Badger in pursuance of any agreement or understanding made or had with said Daniel B. previous to said sale.

And this respondent, further answering, is informed and believes that as to the allegation in said complainant's bill, that the notice of said auction sales fraudulently omitted, to give notice of the place where the same would take place, the same is not true in fact, and that said advertisements were not written, nor the form thereof prescribed by the said Daniel B., but that the same were written by the auctioneer who sold said estates, as was and is the

usage and custom, and that said advertisements did substantially inform all persons that said estates were severally to be sold upon the premises, and this respondent begs leave to refer your honors to original copies of said advertisements filed herewith, and which he prays may be taken as a part of this answer. And this respondent is informed and believes, and avers the fact to be, that it was notorious that said auction sales were to take place, and especially well known to the widow and heirs-at-law of said intestate, and were frequent subjects of conversation previous thereto between them and the said Daniel B., and that each of said sales was attended by a large number of persons.

25 And this respondent further, upon his information and belief, informs your honors that said administrators not only gave the notice of said sales required by the order of the supreme judicial court, but the Distil-House square estate being the most important estate, and the one from which they hoped to realize the most money, they did give extraordinary notice of the sale thereof by also advertising said sale in a newspaper then known and published in said city of Boston as the "Daily Patriot," and also by causing said sale to be cried by the city crier.

And this respondent, further answering as to the allegation in said bill, that said estates sold for a less sum, respectively, than that at which they had been previously appraised, respectfully submits that it is wholly immaterial whether the same be true or not; but this respondent, upon his information and belief, avers and answers that the whole real estate of said intestate was originally appraised at the sum of $12,475 00; that the estate was mortgaged to the amount of $6,534 37; that previous to the date of said auction sales, the said North Federal court and Broad street estates had been assigned and set over to said Ann Badger, widow, as and for her dower, and that said Ann was then a woman of about forty-eight years of age, in vigorous health, and that she did in fact survive to the year 1855, and that the interest in said estates was sold aforesaid, subject to said life estate, and that the prices which said estates respectively brought, at said auction sales, were in fact, and were then considered to be, fair and reasonable prices, and the same were satisfactory to the heirs-at-law of said intestate, including this complainant, and also to the guardians of those who were then minors, and that no dissatisfaction thereat was ever expressed by this complainant, or any of said heirs-at-law, until shortly before the bringing by them of a certain bill of complaint against the said Daniel B. in this court, hereinafter referred to.

And this respondent further answering, says that he is informed and believes, and so avers, that said administrators, and especially the said Daniel B., were anxious that the best prices possible might be realized at said auction sales, and that it might be true, and so he has heard the said Daniel B. in his lifetime state, that he might have solicited the said Hart, Gillpatrick and other persons to attend said sales and purchase thereat, but with no understanding or agreement that they should act therein for the benefit of said Daniel B., or with

any purpose or expectation of unlawfully receiving said estates or either of them, or any interest therein, to himself.

And this respondent, upon his information and belief, admits that the said Hart on the 14th March, A. D. 1831, did sell and convey to the said Daniel B. the said Distil-House square estate for the sum of $2,850, and on the 28th March, 1831 the said Broad street estate for the sum of $700, and that the said Gillpatrick did sell and convey to the said Daniel B. the said North Federal court estate on the 28th March, 1831, for the sum of $170.

26 And this respondent further answering, informs your honors that said Daniel B. was much attached to said estates, North Federal court estate being, as this respondent is informed and believes, the house in which said Daniel B. was born; and said Broad street estate being the store in which the said Daniel B. had, when a minor, attended as clerk for his father, and in which after coming of age he had carried on business on his own account, and was then occupying and did continue to occupy as a store to the time of his decease, and that said Daniel B. never attempted or desired to conceal the fact that he did entertain the hope that he might ultimately become the owner of the same, if he could purchase the same at a reasonable price from such persons as might become the owners thereof at said auction sales, and that this desire was well known to and participated in by said widow and the heirs-at-law of said intestate, the present complainant included, and that said Daniel B. did thereafter succeed in purchasing the same at a small advance as is hereinbefore stated, and that said purchases were well known at the time thereof to the said widow and heirs-at-law, and were never concealed, or attempted to be concealed, by said Daniel B. from them or either of them, but said Daniel B. remained notoriously in the possession of said Broad street estate, paying no rent, and did, as owner, collect the rent of said Distil-House square estate, and that, as this respondent is informed and believes, no dissatisfaction was ever expressed by either said widow or said heirs-at-law to the said Daniel B. thereat, at any time, and never was expressed to any one until or that time previous to the filing of the bill hereinafter referred to against said Daniel B. and others, when, owing to unexpected causes, said estates had very much increased in value; and this respondent, upon his information and belief, denies every allegation in the complainant's bill to the contrary hereof.

And this respondent, upon his information and belief, answers and avers that the conveyances were made to the said Hart and Gillpatrick upon the considerations there named, being the prices at which said estates were sold respectively, at auction, although it may well be that no actual payments were made by them or either of them to said administrators, inasmuch as the said Daniel B. did very soon thereafter purchase said estates of them, and did himself assume and account to said administrators for said considerations, and not because said auction sales were not fair and genuine.

And this respondent, upon his information and belief, denies that the payments made by said Daniel B. to said Hart and Gillpatrick

respectively were on account of any services whatever, fraudulent or otherwise, rendered by them or either of them in the purchase of said estates, as is most unjustly alleged in said bill, or in pursuance of any understanding, agreement or trust existing between them or either of them and said Daniel B. previous to or at the time of said auction sales, but simply because the said Hart and Gillpatrick demanded the same as a reasonable advance upon the price at which they had purchased the same, and which the said Daniel B.
27 was willing to pay for the same; and this respondent, upon his information and belief, denies every allegation in the complainant's bill to the contrary hereof.

And this respondent is informed and believes, and so answers and gives your honors to be informed, that in the early part of the year 1831 the said administrators did cause to be duly advertised for sale at public auction the said estates in Broad street and North Federal court, and that at the time and place so advertised, the said North Federal court was offered for sale, and the same was bid off by one Adin Hall, but at what sum this respondent is unable to state, but that the said Hall did wholly neglect and refuse to take a conveyance of or pay for said estate, and that said administrators were obliged to offer said estate again for sale, and that, acting under the advice of their counsel, W. C. Aylwin, esq., they did cause to be advertised and sold the said estate, as hereinbefore is more particularly stated; and this respondent, upon his information and belief, denies that said first sale was made with any fraudulent design or purpose whatever, or that said Hart attended and bid at said sale in behalf of said Daniel B.

And this respondent is informed and believes, that, for reasons which at this distance of time it is impossible for this respondent to state, it was deemed inexpedient on the said 5th day of February, A. D. 1831, to expose said Broad street estate for sale, and the same was not then offered for sale; and this respondent, upon his information and belief, denies that said Hart or any other person bid any sum for the same or any part thereof, or that the same was then sold to him. And this respondent is informed and believes, and answers, that said Hart never paid or offered to pay the sum of $386 or any other sum for any portion of said Broad street estate, nor took or offered to take any deed of the same from said administrators under said alleged sale.

And this respondent denies all allegations of fraud or fraudulent conspiracy or agreement between the said Daniel B. and the said Hart and Gillpatrick, or either of them, and answers that if any such existed, as is alleged in said bill, the same must have been known to and participated in by the said Joseph Badger, the co administrator of said Daniel B., and yet it is not pretended in said bill that such was the case.

And this respondent denies that the said complainant or any of said heirs-at-law of said intestate did not have personal knowledge of any and all acts and doings of said Daniel B. in reference to the sale and purchase of said estates until within five years prior to the

filing of his bill; but, on the contrary, this respondent answers and avers that the same were well known to them at or about the time when the same took place, and the said Daniel B. never attempted or practised any concealment in reference thereto, and this respondent submits that the allegations in the complainant's bill in this respect are wholly vague, indefinite, and insufficient.

28 And this defendant, in answer to the pretended claims of the complainant to said real estate, or to the proceeds of any portion thereof, says, that in and by the 120th chapter of the rev. sts. of Massachusetts, in the 1st section thereof, it is, among other things, enacted that "the following actions shall be commenced within six years next after the cause of action shall accrue, and not afterwards:

"*First.* All actions of debt founded upon contract or liability not under seal, except such as are brought upon the judgment or decree of some court of record of the United States.

"*Fourth.* All actions of assumpsit, or upon the case, founded on any contract or liability, express or implied."

And also, in and by the 1st section of the 119th chapter of the rev. sts., that no person shall commence an action for the recovery of any lands, nor shall make any entry thereupon, unless within twenty years after the right to make such entry, or bring such action, first accrued, or within twenty years after he or those from, by, or under whom he claims shall have been seized or possessed of the premises.

And this defendant pleads the said statutes, and relies thereon, as a bar to so much of said bill as seeks for a conveyance of said real estate, or for an account from said Daniel B. or this defendant, and prays that he may have the like benefit thereof as if the same had been set forth in a plea to said bill. And this respondent denies that said Daniel B. ever became possessed of or took any interest in or received any rents and profits from either of said estates as the trustee for the said complainant, or either of said children of said intestate, but solely in his own right and as the owner thereof.

And this respondent further answers and informs your honors that heretofore, to wit, on the 8th May, 1857, this present complainant, together with the said Augustus H. Badger, Almira A. Badger, Benaiah P. Sturgis and Mary H. B. Sturgis, his wife, Moses M. Smith and Eliza M. Smith, his wife, Alfred C. Badger, and Jacob Badger, did exhibit in this honorable court their bill of complaint against the said Daniel B. Badger & als., wherein they did make substantially the same allegations against the said Daniel B. as in the present bill is contained, and the said Daniel B. did make full answer thereunto under oath, and a replication thereto was filed and testimony was taken by said parties respectively, and thereafter, to wit, as on the said complainant's motion, this said bill of complaint was dismissed with costs for the respondents. And this respondent informs your honors that most if not all of the transactions referred to in this complainant's bill were within the personal knowledge of the said Daniel B., and were fully answered unto by him as aforesaid,

and could not be known personally by your respondent, as he was not living at the time they are alleged to have taken place; and that he begs leave to refer your honors to the bill and the answer of said Daniel B. in the preceding case, and to make said answer a part of this respondent's answer, and that full effect may be given to the same.

29 And this respondent denies that the said Augustus H., Almira A., Mary H. B., Eliza M., Jacob, and the said Alfred C., have sold, assigned and conveyed unto this complainant, the said James W., all their right, title and interest in and to the foregoing estates, and to the rents, profits and proceeds thereof, and prays that he may be required to prove the same. And this respondent avers that if any such conveyance was nominally made it is fraudulent and void as against this respondent, and was made for the sole purpose of enabling said persons to be witnesses in the present suit, and upon the secret trust and understanding that this complainant shall hold said several interests for the benefit of said assignors, and that he will convey or pay to them their due proportion of whatever may be recovered in this suit, and that said assignment and conveyance is colorable merely and against good policy, and was made to oppress said Daniel B. and this respondent, and was the voluntary purchase by said complainant of a litigation then pending between said pretended assignors and said Daniel B , and in order that this complainant might obtain an undue advantage over said Daniel B. And this respondent denies that this complainant thereby derived any right or interest, either at law or in equity, from said assignors, or any right or claim to maintain this bill of complaint.

This respondent believes it to be true and admits that said Daniel B. did, in his own behalf, but not in behalf of any other person, make a petition to the city of Boston for compensation for damages, as is stated in said bill, but for the greater certainty he prays that the complainant may be required to adduce proper proof of said proceedings, if the same be material.

This respondent also admits that said Daniel B. did make certain mortgages to one Samuel D. Parker, as in said bill is alleged, but he denies that they were made without consideration, or that said Parker was then or had been the counsel of said Daniel B., or that said Parker had any knowledge or belief that the title of said Daniel B. to said estates was not clear and unquestionable, but he is informed and believes that said Parker did advance to said Daniel B. the full amounts which said mortgages were given to secure, and did receive the said mortgages in good faith and without any suspicion that any one disputed the right of said Daniel B. to said estates.

And this respondent admits that after the filing of the original bill in this case, and after the said Daniel B. had filed a plea in bar to the same, and also an answer under oath in support of said plea, which answer this respondent begs leave to refer to and make a part of this his answer, to wit, on or about June 1, A. D. 1860, the said Daniel B. deceased, leaving a widow, who still survives, and leaving a last will and testament, wherein your respondent is made the

devisee of the said Daniel B., subject, however, to said widow's right of dower in all the real estate aforesaid of said Daniel B., but not otherwise.

And this respondent denies all and all manner of unlawful
30 combination and confederacy wherewith he or the said Daniel B. are by the said bill charged, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf, most wrongfully sustained.

ERASTUS B. BADGER.
E. MERWIN,
Solicitor and of Counsel.

U. S. A., District of Massachusetts, *ss.*,
January 1, *A. D.* 1861.

Then personally appeared the said Erastus B. Badger, and made oath that the foregoing answer, by him subscribed, has been carefully read to him, and he is familiar with the contents thereof; that so far as stated upon his personal knowledge they are true, and so far as they are stated upon his information and belief he believes them to be true.

Before me: C. P. CURTIS, Jr.,
U. S. Com'r.

At the same time was filed the following:

Answer of the city of Boston, one of said respondents.

This defendant, not waiving any objections to the manifold errors in said bill of complaint to so much thereof as this defendant is advised is material or necessary to make answer unto, answering, saith:

This defendant admits that, by a resolve of the Board of Aldermen of said city of Boston, a certain estate, or a portion thereof, was taken for the purpose of carrying out a street thereon, as in said bill is set forth; that one Daniel B. Badger did petition in his own behalf, and not in behalf of any other person or persons, as in said bill is alleged, for compensation for damages sustained by him by the laying out of a street over said estate, and that thereupon proceedings were had, substantially as is set forth in said bill of complaint, but for the greater certainty this defendant begs leave to refer to a true copy of all of said proceedings filed herewith, and which this defendant begs may be taken as a part of this answer.

E. MERWIN,
Solicitor and of Counsel for said city of Boston.

31 Thereupon, at the same term was filed the following :

Replication.

To be considered as filed in due time.

JAMES W. BADGER
vs.
DANIEL B. BADGER *et al.*

The replication of James W. Badger, complainant, to the separate answers of the several defendants to the bill of complaint of the said complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said several answers, for replication thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are, and each of them is, uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever, in the said answers, or either of them, contained, is true; all which matters, and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

JAMES B. ROBB,
Solicitor for Complainant.

Final decree.

This cause was thence continued from term to term, to this present term, and now the following decree is entered therein, namely : This cause came on to be heard at the last May term of this court, A. D. 1862, and was argued by counsel. The same was thence continued to this present term. And now, after mature deliberation thereon had, it is ordered, adjudged, and decreed by the court that the complainant's said bill of complaint be, and the same is hereby dismissed with costs for said defendants, taxed as follows : for said Erastus B. Badger the sum of ——, and for said Samuel Dunn Parker the sum of ——, and for said city of Boston the sum of ——.

Claim of appeal.

Whereupon, at the same term, and in open court, to wit, on the twenty-eighth day of November, A. D. 1862, said complainant files his claim of appeal in the words following, to wit :

And now the complainant comes and appeals from the final decree of said court to the Supreme Court of the United States to be holden at Washington, and prays that this his appeal may be allowed.

J. W. BADGER,
By JAMES B. ROBB,
His Att'y.

Which appeal is allowed by the court; and said complainant gives to said defendants good and sufficient security to prosecute his said

appeal with effect, and to pay all damages and costs if he shall fail to make his appeal good, which security is approved by the court.

A true record. Attest :

H. W. FULLER, *Clerk.*

32 EVIDENCE FOR COMPLAINANTS.

List of debts.—Daniel Badger.

List of debts due sundry individuals, by the estate of Daniel Badger, deceased, viz :

3 notes in bank, secured by mortgage, dated Nov. 1, 1818	$3,000	
Interest on above	345	
		$3,345 00
1 note by Mrs. Farmer, secured by mortgage	$1,200	
Interest on ditto	30	
		1,230 00
1 note to 2d Baptist church		450 00
Interest on ditto		13 50
2 notes to Priscilla Badger, dated Oct. 26, 1813, and June 22, 1814	$170	
Interest on above	62	
		232 00
1 note to E. Jacobs, dated April 15, 1817		200 00
1 " " D. Pulsifer		100 00
Amount due I. Fessenden		105 00
Bangs & Bradford's account		337 55
Moses Rogers		50 43
Ezra Trull		53 08
Asa Ward		38 95
Cabot & Clarke		66 83
J. Goddard		42 00
Leach Harris		78 59
Luther Parks		48 92
B. French		30 65
M. M. Hunt		164 97
G. & T. Odiorne		20 11
F. C. Lowell		100 00
		6,707 58

SUFFOLK, ss. PROBATE COURT, *October* 9, 1820.

Said Daniel B. Badger and Joseph Badger, administrators, presented this list of debts under oath, whereupon I do hereby receive the same and order it to be filed and recorded.

T. DAWES,
Judge Probate.

A true copy. Attest :

WM. C. BROWN, *Reg.*

33 *Inventory.—Daniel Badger.*

Inventory of the goods and chattels of Daniel Badger, late of Boston, deceased, as appraised by us, the subscribers, being appointed to that service by the honorable Thomas Dawes, esq., judge of probate of wills, &c., for the county of Suffolk, after being duly sworn to the faithful performance of said trust, viz: Goods and clothing in the shop No. 153 Broad street.

109 pair woolen mittens, *a* 16¾ c	$18 16
19 " hoes and socks, *a* 16¾ c	3 17
28 shirts, cotton and check, *a* 70 c	19 60
13 pieces tape, *a* 6 c	78
2,000 needles	2 00
11 silk handkerchiefs, *a* 40 c	4 40
3 pair pantaloons, unmade	12 00
1¼ lb. silk	7 50
1¼ lb. do. and cotton twist	6 25
2 pair sattinet pantaloons	2 00
14 sticks shoe strings	2 34
13 gross buttons and moulds	2 60
Lot of small button moulds	2 72
27 pair linen trousers, *a* 70 c	18 90
5 pair flannel drawers, *a* 80 c	4 00
4 duck jackets, thin, *a* $1	4 00
29 duck jackets, *a* 70 c	20 30
2 yards cotton	50
13 cotton and linen pantaloons, *a* $1	13 00
56 vests, thick and thin, 80 c	44 80
27 baize shirts, $1	27 00
4 comforters, *a* 20 c	80
72 pair trousers, woolen, $1 75	126 00
1 small piece duck and cotton	50
8 lines, *a* 25 c	2 00
4½ lbs. woolen yarn	2 25
4 unmade jackets	7 00
Woolen remnant and lot paper	1 00
5 short woolen jackets, *a* $5	25 00
3 " " " $3 50	10 50
3 " " " $6 00	18 00
10 straw beds, 50 c	5 00
34 7 mattresses, $10 50; 1 damaged boys' great coat, *a* 75 c	11 25
5 damaged men's great coats	15 00
62 yards gauze, *a* 8 c	4 96
7¾ lbs. thread	11 62
14 lbs. "	14 00
4 hats, $4; 9 mill 'd caps, $1 80	5 80
7 mattress covers, tow cloth	2 80
1 boys' long coat	10 00

2 men's long coats, *a* $8	$16 00
3 P. jackets, *a* $4 50	13 50
12 monkey jackets, *a* $3	36 00
7 pair duffill trousers, *a* $1 50	10 50
20 short jackets, *a* $2 50	50 00
1 short jacket, *a* 50 c	50
14 gross small buttons, *a* 20 c	2 80
7 gross large buttons, *a* 7 c	7 00
44 gross mohair buttons, *a* 6 c	2 64
Lot of old buttons	75
6 leather hats, glazed, *a* 50 c	3 00
1 old hammock	1 00
32 tin pots, *a* 10 c	3 20
9 chests, *a* $1	9 00
Lot damaged thread	1 00
2 locks and lot of brass hinges	1 50
1 compass, and 1 ensign	1 00
1 tin cannister	1 00
1 bucket with saltpetre	50
1 case and bottles	2 00
2½ barrels damaged ship bread	2 50
1 old stove funnel	2 00
2 half barrels sour flour	1 00
2 desks	2 50
27¾ yds. tow cloth, *a* 16¾	4 62
18 " waistcoating, *a* 45 c	8 10
8 " black broadcloth, *a* $3 50	28 00
3 " green " *a* $3 00	9 00
7¼ " mixed " *a* $3 50	25 37
2 " brown " coarse, *a* $1 50	3 00
2 " blue " " *a* $1 50	3 00
4½ " " " " *a* 60 c	2 70
15 " gingham, *a* 28 c	4 20
7½ " chambray, *a* 14 c	1 08
8½ " waistcoating, *a* 70 c	6 47
18½ " cotton, *a* 16 c	2 96
Lot of moss, *a* $12	12 00
Lot remnants of nankeen	1 09
60 yards coarse cambrick, *a* 10 c	6 00
35 Lamp and shears	3 00
31 pair suspenders, *a* 16¾ c	5 16
8 slates, *a* 10 c	80
Lot of stationary, *a* $3	3 00
Small looking-glass	75
	$790 60

Furniture in the house.

1 old bed, bedstead and bedding	$15 00
1 " " "	15 00
1 " " "	16 00

1 glass, table, and 4 chairs	$4 00	
1 bed, bedstead and bedding	50 00	
1 bureau, $4; 1 table, $2; chairs and work stand, $4,	10 00	
1 pair old brass andirons	1 00	
1 " card tables	15 00	
7 chairs, $9; sofa, $4; pair looking-glasses, $10	23 00	
1 brass fire sett, $6; 1 carpet, $15; 3 chairs, $1	22 00	
1 dining table, $3 50; 1 secretary, $10; 8 chairs, $1,	14 50	
1 cradle and light stand, $1; time piece, $10; fire sett, $6	17 00	
1 looking-glass, $1; carpet, $6; table, $1	8 00	
Sundries of kitchen furniture	10 00	
Lot of barrels, tools, &c., in cellar	10 00	
Schooner Hope and appurtenances	700 00	
		$930 50
Total personal estate		$1,721 10

Real estate.

House and land in Broad street, No. 153	$4,000 00
House and land in Lynde street	2,000 00
House and land in North Federal court	1.200 00
Part of a house and land in Distil-house square	2,500 00
Shop on Parkman's wharf	1,000 00
House and land in Cambridgeport	1,000 00
Part of an old house and land in Lynn	100 00
One other house in Cambridgeport	500 00
36 1 pew in the first Baptist meeting-house, No. 67	120 00
1 " " " " " No. —	50 00
	$12.470 00

THOMAS BADGER,
EDMUND PARSONS,
WILLIAM JONES,
Appraisers.

BOSTON, *October* 18, 1819.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

At a court of probate, holden at Boston, in said county, on Monday, the eighteenth day of October, A. D. 1819.

The foregoing having been duly returned, and this day exhibited, on oath, by Joseph Badger and Daniel B. Badger, the administrators of the estate of said deceased, as a true and perfect inventory of all the estate of said deceased that has hitherto come to their hands, possession, or knowledge, and the said administrators having made oath that if any further estate of said deceased shall hereafter come

to their possession or knowledge, they will render a just and true account thereof into the probate office to be of record herewith.

It is therefore decreed, by the judge of said court, that the same be, and it is hereby accordingly accepted and ordered to be recorded.

THOMAS DAWES, *Judge Probate.*

A true copy of record.
Attest: WM. C. BROWN, *Reg.*

37 *Schedule.—Daniel Badger.*

List of debts due the estate of Daniel Badger, deceased, by sundry individuals, viz:

Mrs. Peterson	$157 92
M. Thompson	27 25
I. Kinsman	19 50
E. Young	22 00
S. Low	33 12
Capt. A. Brooks	40 00
E. P. Evans	15 00
M. Steward	6 00
Doctor Bartlett, estate	24 45
E. Gregory	13 00
L. Harris	2 75
H. Spalding	9 25
Gilman & Aiken	32 93
A. Potter	91 20
P. Reed	3 00
Sundry debts	207 12
J. P. Alcott, note	26 28
John Hamon	12 00
Sundry notes, unsettled	2,085 03
D. Brown	114 18
Sundry notes	266 82
T. Clap	90 17
W. Palmer, estate	176 75
	$3,475 72

SUFFOLK ss., PROBATE COURT,
October 9th, 1820.

Daniel B. Badger and Joseph Badger, administrators, made oath to the foregoing schedule, and I order the same to be filed and recorded.

T. DAWES, *Judge Probate.*

A true copy.
Attest: WM. C. BROWN, *Reg.*

38 *Additional inventory.—Daniel Badger.*

A second or additional inventory of sundry parcels of real and personal estate whereof Captain Daniel Badger, deceased, died, seized

and possessed, lately come to the hand and knowledge of the administrators, and by them handed to us, the subscribers, for appraisement, viz:

A tract of land in the county of Oxford, formerly in the county of York, lying in township No. 5, west of Bingham's P———, and east of Hampshire line, being range 12, lot No. 6, being a second division lot, containing one hundred acres, *a* $1	$100 00
Thirteen shares in Blodget's Canal, Amoskeag Falls, New Hampshire, No. 207, to 208, and 517 to 527, *a* $3	39 00
Schooner Thomas, with tackle and apparel, burthen, one hundred and three tons, 19 years old	500 00
One twenty-fourth part of a right of inheritance and undivided in estate of Mary Stone house, late of Boston, deceased	75 00
	$714 00

Boston, April 24th, 1820.

THOMAS BADGER,
EDMUND PARSONS,
WILLIAM JONES,
Appraisers.

SUFFOLK SS., PROBATE COURT,
May 8, 1820.

Joseph Badger and Daniel Badger, administrators on the estate of Daniel Badger, late of Boston, deceased, made oath to this additional inventory, and I order the same to be filed and recorded.

THOMAS DAWES, *Judge Probate.*

Examined.

JOHN HEARD, JR., *Reg.*

A true copy of record.
Attest:

WM. C. BROWN, *Reg.*

39 *Administrator's account.—Daniel Badger.*

The first account of Joseph Badger and Daniel B. Badger, administrators of the goods and estate of Daniel Badger, late of Boston, in the county of Suffolk, gentleman, deceased.

The said administrators charge themselves with all the personal estate as the same was appraized, viz:

DR.

Goods and clothing in shop	$790 60
Furniture, &c., at the dwelling-house of deceased	230 50
Schooner Hope and appurtenances	700 00
One pew in the 1st Baptist meeting-house, No. 67	120 00

Cash on hand	$350 00
" received of L. W. Lombard, for mackerel	109 34
" " I. Boyes, esq., for rent	22 53
" " M. Bryant "	2 50
" " Jno. Lang for bill	1 50
" " Charles Cruger for bill	2 00
Schooner Thomas and appurtenances	550 00
Cash of Job Drew, for execution	3 31
" Salma Clap	50 00
" Samuel Hill, on account	19 72
" I. & C. Grant	15 15
" Capt. Loring, for rent	40 00
" Timothy Fuller	11 75
" Wm. Rutter	9 00
" Capt. Stevenson on account	57 00
" do note	5 50
" I. Dalrymple for rent	1 50
" David Pratt "	5 50
" John Andrews for note	21 62
" Elijah Fisk	7 00
" Asher Benjamin, on account	25 88
" State Bank	5 68
" Dupee & Badger, for rent	6 00
" John Brooks, on account	3 00
" Jona. Emmons "	45
" Salma Clap	25 00
" John Weeks on note	45 18
" Wm. Taylor, on account	1 00

40

Cash of H. & Q. Reed	4 33
" Mr. Holbrook	6 48
" N. Curtis, esq., for rent on account of Mrs. Peterson	120 00
" Bell & Mountfort on account	3 50
" Lot Hoers, balance due on fishing voyage	1,906 88
" Brushes, &c., sold for	2 88
" Daniel Frost for note	34 65
" Two shares in the Exchange Coffee House. Amt. dividend	44 07
" David Brown on account	81 56
" 10 shares of stock in State Bank *a* $62 per share	620 00
" Received dividend on above	8 00
	$6,070 56
" Capt. Park for adventure	24 67
" Wild & Gray, use of schooner	46 12
" Stephen Peabody	37
" Samuel Hill	75
" John Bannister	3 50
" M. Dearing	6 50

Cash of Wm. Wiswell	$46 35
" Binney & Peace, note	12 67
" John Badger, note	66 23
" I. Hilers, bill	260 89
" Levi Duner's bill	203 83
Balance brought down	$6,742 03
" due administrators	266 52
Probate fees for this account and list of debts and schedule copies, and petition to sell real estate, order of notice, &c	10 85
	$277 37

The said administrators pray allowance for the following charges and payments, viz:

Cr.

Furniture of the dwelling-house given to the widow	$230 50
1 pew, No. 67, 1st Baptist meeting-house	120 00
Loss on sale of schooner Hope between appraisal	150 00
" " Thomas "	200 00
Cash paid at bank for note	405 00
do. do	16 00
" L. W. Lombard for note	359 32
" do. do.	30 00
" Reuben Higgins, account	4 50
41	
Cash paid Sam. Sampson's account	6 75
" Sam. Bael's "	11 69
" Sam. Parkmans' "	25 00
" Thomas Tirrell's account	5 00
" Men for work on schooners	45 00
" Samuel Hill's account	19 72
" Fife & Brown's account	20 68
" Mrs. Willis's account	1 67
" J. & C. Grant's account	15 03
" Gooding & Weeks's account	17 82
" Priscilla Badger's account	10 32
" D. S. Badger's account	7 00
" Jos. Williams's account	10 10
" Nancy Adams's account	12 80
" David Pratt's account	3 33
" Men for moving schooner Hope	3 81
" Mrs. Weeks	2 00
" Wm. Cordwell	42
" O. Rich	84
" Nabby Badger	50
" A. Penniman	25 00

Cash paid balance W. Thompson's account		$4 40
"	Obadiah Rich's account	75
"	Deacon Ransford for inst	27 00
"	Sam. Parkman, rent	25 00
"	Bal. I. Emmon's account	3 81
"	Bates's bill	5 95
"	Bedlington account	5 00
"	Cambridge tax bill	10 79
"	E. Dearborn, sleigh-hire for transporting body of the deceased	19 00
"	Charles Henderson's account	19 27
"	Joseph Badger's bill	6 00
"	Dupee & Badger's bill	2 21
"	Daily Advertiser's bill	2 63
"	Custom-house fees	1 37
"	2 pews' tax	34 00
"	Jas. Smith's account	20 69
"	Holt's bill of schooling	12 00
"	Nath'l Hill's account	4 49
		$1,964 16
"	Balance due Penniman	31 92
"	Boston tax	43 30
"	Cory Cook's account	11 69
"	S. F. Nye, esq., account	21 97
"	Stoddard's account	89

42

Cash paid for Boston Patriot		3 38
"	Gorham's bill p'd S. F. Nye	16 00
"	S. Parkman for mortgage	458 70
"	Note at State Bank	517 00
"	James Sargent's account	9 22
"	Hall & Weld's account	12 44
"	Winslow's account	7 00
"	J. Badger's note	37 00
"	Jos. Bowman's account	36 02
"	Cook's insurance note	39 34
"	S. Faulkner's account	6 00
"	Wharfage of schooner Thomas	8 00
"	Hudson for use of Flakes	80 00
"	Note to Wild & Gray	810 00
"	Probate fees	1 50
"	Pew tax	10 00
"	Note to Joseph Badger	46 53
"	Wharfage schooner Hope	9 17
"	Note to Thos. Badger	104 16
"	Jacob Saunders's account	72 29
"	Robert Garrett's account	3 00
"	M. Farmer for int	72 00
"	Sam. Beal's bill	49 25

Cash paid Wm. B. Bradford's bill		$20 50
"	E. Adams's mortgage	899 59
"	Capt. Atwood's account	3 00
"	Sch. Thomas wharfage	18 00
"	Due bill to W. Badger	95 00
"	Thos. Daniel's account	6 42
"	Geo. Darracott's account	7 66
"	Note to W. Fessenden	60 00
"	Interest to E. Jacobs	15 00
"	Mason's account	12 55
"	D. Hersey's bill	2 50
"	Work on sch. Thomas	3 33
"	Schooling for Almira	2 00
"	Interest to D. Pulsifer	6 00
"	James Bartlett's account	13 75
"	Blasland's account	69
"	Work on sch. Thomas	1 13
"	Dupee & Badger's bill	50
"	Patriot bill for advertising	1 50
"	Wm. Thompson's account	3 25
		$5,657 30

43

Cash paid H. Dearborn's account		4 56
"	Cory Cook's account	2 50
"	A. Penniman's account	6 51
"	L. Leland's account	14 78
"	For Boston money	5 00
"	L. Harris & Son's account	2 87
"	J. F. Bannister's account	1 47
"	Wm. Wiswall's account	80 00
"	I. Kinsty's account	1 90
"	S. Hill's account	3 31
"	A. H. Quincy's account	1 53
"	Thos. Ford's account	4 23
"	P. L. & Russell's account	15 80
"	I. Hiler's account	321 79
"	L. Dames's account	313 21
"	1 P. jacket, charged in Dame's bill erroneously	10 25
"	Wharfage for sch. Thomas	14 50
For this am't, being goods appraised in shop and never received by administrators		8 20
Cash paid Levi Hawks's account		5 21
Balance due administrators		266 52
		$6,742 04

JOSEPH BADGER,
DANIEL B. BADGER,
Administrators.

BOSTON, *Sept.* 25, 1820.

SUFFOLK, *ss:*

At a probate court held at Boston, in said county, on Monday, the ninth day of October, in the year of our Lord one thousand eight hundred and twenty, Daniel B. Badger and Joseph Badger, administrators on the estate of Daniel Badger, late of said Boston, gentleman, deceased, presented this account, produced vouchers, was sworn and examined, and having given notice according to my order of the twenty-fifth day of September last, that the same would be passed upon here this day, and now, no person appearing to object to the same, I do decrec that the same be, and it is hereby, allowed, and ordered to be recorded.

T. DAWES, *Judge Probate.*

A true copy. Attest :

WM. C. BROWN, *Reg.*

44 *Deed.—Cotting to Badger.*

Know all men by these presents, that I, Uriah Cotting, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, merchant, in consideration of the sum of six thousand three hundred dollars paid by Daniel Badger, of the same Boston, gentleman, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey unto the said Daniel Badger, his heirs and assigns, a certain piece of land situated in Broad street, in Boston aforesaid, with the brick house thereon standing, and numbered one hundred and fifty-one, and one hundred and fifty-three, bounded as follows, beginning at a point by the middle of the partition wall, at the northeast corner of William B. Bradford's house on Broad street, running easterly, and bounded northerly on Broad street, there measuring eighteen feet to the centre of the wall; then running southerly by the middle of said wall forty-four feet to land of Jacob Wendell; then running westerly and bounded southerly on land of said Wendell by a stone wall and including part of the same, there measuring twenty-eight feet; then running southerly and westerly by the said stone wall and including part of the same, bounded southerly and southwesterly by land of said Wendell and land of Abraham Gibson, there measuring forty feet to the land of Joseph Baxter, jr.; then running easterly and bounded northerly partly on land of said Baxter, and partly on a passage-way leading to Broad street which is to be kept open for the benefit of this and the adjoining estates, there measuring fifteen feet; then running southerly and bounded easterly on land of said Wm. B. Bradford, there measuring six feet; then running easterly and bounded northerly on said Bradford's land, there measuring six feet; then running southerly and bounded easterly on said Bradford's land, there measuring twelve feet; then running easterly and bounded northerly on house and land of said Bradford by the middle of the partition wall, there measuring fifty-seven feet to the point in Broad street first mentioned, be the said measurements more or less, with all the privileges and appurtenances thereto belonging, with a privilege in the pump and well standing in the said passage-way he

paying a proportionable part of the expeuse of keeping the same in repair. To have and to hold the afore-granted premises to the said Badger, his heirs and assigns, to his and their use and behoof forever. And I do covenant with the said Badger, his heirs and assigns, that I am lawfully seized in fee of the afore-granted premises; that they are free of all incumbrances. That I have good right to sell and convey the same to the said Badger; and that I will warrant and defend the same remises to the said Badger, his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Uriah Cotting, and Thankful, my wife, who hereby releases her dower in the premises, have hereunto set our hands and seals this first day of November, in the year of our Lord, one thousand eight hundred and fifteen.

URIAH COTTING, [L. S.]
THANKFUL COTTING, [L. S.]

Signed, sealed and delivered in presence of us,

GEO. CUNNINGHAM,
FRANCIS COTTING.

SUFFOLK, *ss:* BOSTON, 13*th November*, 1815.

Then the above named Uriah Cotting acknowledged the above instrument to be his free act and deed.

Before me,

WM. ALLINE,
Justice of the Peace.

November 13, 1815. Received, entered, and examined.
P'r WM. ALLINE, *Reg.*

A true copy from the Record of Deeds for the county of Suffolk. Lib. 249, fol. 136.

Attest: JAMES RICE, *Reg.*

BOSTON, *April* 21, 1831.

We acknowledge to have received full satisfaction for the debt secured by this mortgage, and do therefore, as assignees thereof, hereby cancel and discharge the same.

THOMAS H. PERKINS,
SAMUEL G. PERKINS,
WILLIAM H. GARDINER,
Trustees under the will of J. Perkins.
By W. H. GARDINER.

Test.—HENRY ALLINE, *Reg.*

A true copy of the original discharge, entered in the margin of a mortgage deed, from Daniel Badger to Uriah Cotting, of an estate in Broad street, in Boston, to secure the payment of fifty-five hundred dollars, dated November 1st, 1815, recorded with Suffolk deeds, lib. 249, fol. 138.

Attest: JAMES RICE, *Reg.*

46 *Deed.—Richardson & ux. to Badger.*

Know all men by these presents that we, Thomas Richardson, brass founder, and Ann J. Richardson, his wife, in her right, both of Boston, in the county of Suffolk, and commonwealth of Massachusetts, in consideration of two hundred and fifty dollars to us paid by Daniel B. Badger, of said Boston, trader, the receipt whereof is hereby acknowledged, do by these presents grant, remise, and release and forever quit claim unto the said Daniel B. Badger, his heirs and assigns, all our right, title, interest, and estate, in and to the lands and real estate hereinafter described, viz: A certain dwelling house, with the land under and belonging to the same, situate in said Boston; bounded northeasterly on the Mill creek, and there measuring fourteen feet six inches, northwesterly on land now, or formerly, of John Harvey, thirty-four feet; southwesterly on Link alley, fourteen feet ten inches, and southeasterly on land now, or formerly, of David Jones, thirty-six feet six inches, and the privilege of passing to and from the necessary, at the bottom of the yard, being the same real estate conveyed by David Greene to Daniel Badger, by deed, dated June 7th, A. D. 1803, recorded with Suffolk deeds, lib. 205, fol. 283.

Also, a tract of land situate in Cambridge, in the county of Middlesex, and the buildings thereon, bounded northeasterly on Canal street, and there measuring twenty-four feet, southeasterly on a brick house, and the land thereto belonging, one hundred and forty-two feet, southwesterly on a fifteen feet passage way, twenty-four feet, northwesterly by a brick house and the land thereto belonging, one hundred and forty feet, or however otherwise bounded. The last described real estate being the same which Samuel, and Jonathan Howe conveyed to said Daniel Badger, by deed, dated December 12th, A. D. 1807, recorded with Middlesex deeds, book 175, page 407. Also, all our right, title and interest, in and to a certain tract of land, and the buildings thereon, situate in Distil-house square, in said Boston, bounded on the street sixty feet, more or less. Northwesterly on land late of Isaiah Doane, and now, or lately, of Jacob Tidd, one hundred and one feet; northeasterly on the Mill pond, so called, sixty-six feet; southeasterly partly on said Mill pond, and partly by land now, or late, of the heirs of John Stutson, one hundred and seven feet to the street. Which last mentioned real estate is described in the deed of Reuben Sanborn, to Ezra Trull, recorded with Suffolk deeds, lib. 228, fol. 284.

Also, all our right, title, and interest, in and to a certain piece of land, situate in Broad street, in said Boston, with the brick house thereon, (set off as dower to the mother of said Ann J.) numbered one hundred and fifty and one hundred and fifty-three, bounded as follows,
viz: beginning at a point by the middle of the partition wall,
47 at the northeast corner of William B. Bradford's house on
Broad street, running easterly and bounded northerly on Broad street, eighteen feet to the centre of the wall, then running southerly by the middle of said wall, forty-four feet to the land of Jacob Wendell. Then running westerly and bounded southerly on land of said Wendell, by a stone wall, and including part of the same,

there measuring twenty-eight feet. Then running southerly and westerly by said stone wall, and including part of it, bounded southerly and southwesterly by land now or late of said Wendell and Abraham Gibson, there measuring forty feet to land of Joseph Baxter, jr., then running easterly and bounded northerly partly on land of said Baxter, and partly on a passage-way leading to Broad Street, there measuring fifteen feet. Then running southerly and bounded easterly on land now or late of said Bradford, there measuring six feet, and bounded northerly on said Bradford's land six feet, easterly on said Bradford's land twelve feet, then running easterly and bounded northerly on house and land of said Bradford by the middle of the partition wall, there measuring fifty-seven feet, to the point of beginning on Broad street. Said last mentioned tract of land being the same conveyed by Uriah Cotting to said Daniel Badger, deceased, by deed dated November 1st, A. D. 1815, recorded with Suffolk deeds, book 249, leaf 136.

Also, all our right, title and interest in certain real estate in Lynn, in the county of Essex, described in the deed of Nathaniel Emmes to said Daniel Badger, recorded with Essex deeds, book 193, leaf 268, or however otherwise said several tracts of land may measure or be bounded, and all rights, privileges and appurtenances to the same respectively belonging, and subject to all conditions, restrictions, reservations, and exceptions contained in the several conveyances thereof to said Daniel Badger, deceased. To have and to hold the above granted premises with all our right, title, interest and estate in and to the privileges and appurtenances to the said land and tenements belonging to him, the said Daniel B. Badger, his heirs and assigns forever. And we, the said Thomas Richardson and Ann J. Richardson, for ourselves and our heirs, executors, and administrators, do covenant with the said Daniel B. Badger, his heirs and assigns, that we will, and our heirs, executors, and administrators shall warrant and defend the same to the said Daniel B. Badger, his heirs and assigns forever against the lawful claims and demands of all persons, claiming by, through or under us, and none other.

In witness thereof, we, the said Thomas Richardson and Ann J. Richardson, have hereunto set our hands and seals this fifth day of May, in the year of our Lord eighteen hundred and thirty.

THOMAS RICHARDSON. [L. S.]
ANN J. RICHARDSON. [L. S.]

Signed, sealed, and delivered in presence of us—
JOHN R. ADAN,
SARAH S. BLAKE.

48 COMMONWEALTH of MASSACHUSETTS, SUFFOLK, ss. May 5th, A. D., 1830.

Then personally appeared the above named Thomas Richardson and Ann J. Richardson, and acknowledged the above instrument to be their free act and deed.

Before me,

JOHN R. ADAN, *Justice of the Peace.*

May 12th, 1830.

Received, entered, and examined,

P'r HENRY ALLINE, *Reg.*

A true copy from the records of deeds for the county of Suffolk, lib. 346, fol. 73.

Attest : JAMES RICE, *Reg.*

Deed.—Badger to Badger.

Know all men by these presents, that I, Jacob Badger, of the city of Boston, in the state of Massachusetts, gentlemen, in consideration of the sum of one hundred and sixty-seven dollars paid by Daniel B. Badger, of said Boston, trader, the receipt whereof I do hereby acknowledge, do hereby grant bargain, sell, release, and forever quit claim unto the said Daniel B. Badger, his heirs and assigns, all my right, title and interest in and to the following parcels of land and estate situated in said Boston, viz. : A certain dwelling-house, with the land under and belonging to the same, bounded northeasterly on the Mill creek, there measuring fourteen feet six inches, northwesterly on land now, or formerly, of John Harvey, thirty-four feet ; southwesterly on Link Alley, fourteen feet, ten inches, and southeasterly on land now, or formerly, of David Jones, thirty-six feet six inches, and the privilege of passing to and from the necessary at the bottom of the yard. Being the same estate conveyed by David Green to Daniel Badger, by deed dated June 17, 1803, recorded with Suffolk deeds, lib. 205, fol. 283. Also a certain piece of land situated in Broad street, in said Boston, with the brick house thereon, numbered one hundred and fifty and one hundred and fifty-three, bounded as follows, viz. : Beginning at a point by the middle of the partition wall at the northeast corner of William B. Bradford's
49 house on Broad street, running easterly, and bounded northerly on Broad street, eighteen feet to the centre of the wall. Then running southerly by the middle of said wall, forty-four feet to land of Jacob Wendell. Then running westerly and bounded southerly on land of said Wendell by a stone wall, and including part of the same, there measuring twenty-eight feet. Then running southerly and westerly by said stone wall, and including part of it, bounded southerly and westerly by land now or late of said Wendell and Abraham Gibson, there measuring forty feet, to land of Joseph Baxter, jr. Then running easterly and bounded northerly partly on land of said Baxter, and partly on a passage-way leading to Broad street, there measuring fifteen feet. Then running southerly and bounded easterly on land now or late of said Bradford, there measuring six feet, and bounded northerly on said Bradford's land six feet, easterly on said Bradford's land twelve feet. Then running easterly and bounded northerly on house and land of said Bradford by the middle of the partition wall, there measuring fifty-seven feet, to the point of beginning on Broad street. Said last described estate being the same conveyed by Uriah Cotting to said Daniel Badger, by deed dated Nov. 1, 1815, and recorded with Suffolk deeds, book 249, leaf 136. Meaning hereby to convey all my right, title and interest in that

portion of the real estate of Daniel Badger, deceased, which was assigned to Ann Badger, his widow, as and for her dower in the real estate of said Daniel, deceased, with all the privileges and appurtenances to the said parcels of land belonging; to have and to hold the afore-granted premises to the said Daniel B. Badger, his heirs and assigns, to his and their use forever. And I do hereby, for myself and my heirs, executors, and administrators, covenant and engage to and with the said Daniel B. Badger, his heirs and assigns, that I and my heirs will warrant and defend the same premises to the said Daniel B. Badger, his heirs and assigns forever, against the lawful claims and demands of all persons claiming from, by, or under me or them, but against no other. In witness whereof I, the said Jacob Badger, have hereunto set my hand and seal this fifteenth day of June, in the year of our Lord one thousand eight hundred and thirty.

JACOB BADGER. [L. S.]

Signed, sealed, and delivered in presence of, the words "situate in said Boston" interlined before delivery.

J. W. FENNO.
W. H. GARDINER.

50 SUFFOLK, *ss*, *June 15th*, 1830.

Personally appeared the above-named Jacob Badger, and acknowledged the above instrument to be his free act and deed.

Before me, W. H. GARDINER,
Justice of Peace.

June 18, 1830, at 5 o'clock p. m.

Received, entered, and examined.

P'r HENRY ALLINE, *Reg.*

A true copy from the records of deeds for the county of Suffolk. lib. 317, fol. 3.

Attest: JAMES RICE, *Reg.*

Deed.—Badger, etc., adm'rs, to Hart.

Know all men by these presents: whereas we, Joseph Badger, pump and block maker, and Daniel B. Badger, trader, both of Boston, in the county of Suffolk, administrators of the estate of Daniel Badger, late of said Boston, gentleman, deceased, intestate, by an order of the supreme judicial court, begun and held at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March last past, were licensed and empowered to sell and pass deeds to convey so much of the real estate of the said deceased as would raise the sum of four thousand six hundred and seventy-six dollars and thirty-three cents, and fifty dollars more for incidental charges; and whereas we, the said Joseph Badger and Daniel B. Badger, having given public notice of the intended sale by printing a notification thereof three weeks successively in the newspaper called the Boston Daily Advertiser, printed in said Boston, agreeably to the order and direction of said court, and having first taken the oath by law in such cases required, did on the twen-

tieth day of July instant, pursuant to the license and notice aforesaid, sell by public auction that part of the real estate of the said Daniel Badger, deceased, hereinafter described, to William P. Hart, of said Boston, for the sum of twenty-eight hundred dollars, and twenty dollars more, he being the highest bidder therefor: Now, therefore, know ye, that we, the said Joseph and Daniel B., by virtue of the power and authority in us vested as aforesaid, and in consideration of the aforesaid sum of two thousand and eight hundred dollars,
51 and twenty dollars more, paid by the said William P. Hart, the receipt whereof we do hereby acknowledge, do hereby give, grant, sell, and convey unto him, the said William P. Hart, his heirs and assigns, a certain lot of land, with the buildings thereon, situate in Distil-house square, so called, in said Boston, and bounded as follows, to wit: in front on the street in said square, there measuring sixty feet, more or less; northwesterly on land of the heirs of Jacob Tidd, deceased, there measuring sixty-two feet and two inches; northeastly on land formerly owned in common by said Daniel, deceased, with others, and set off by warrant of partition from the supreme judicial court, November term, A. D. 1828, unto Jonathan Heath, and there measuring sixty-four feet and six inches; then turning and running southerly, and bounding easterly on land of the heirs of Elijah Utley, deceased, twenty-four feet and two inches; then turning at right angles and running easterly two feet one inch and a half; then turning again at right angles and running southerly to said Distil house square, thirty-eight feet; subject to the right mentioned in the return of said warrant of partition of taking water, and laying a suction for that purpose from the well in said premises, as thereby provided. To have and to hold the afore-granted premises, with all the privileges and appurtenances to the same belonging, to him, the said William P. Hart, his heirs and assigns, to his use and behoof forever. And we, the said Joseph Badger and Daniel B. Badger, for ourselves and our heirs, executors and administrators, do hereby covenant with the said William P. Hart, his heirs and assigns, that, in pursuance of the license aforesaid, we gave public notice of the said intended sale by printing a notification thereof three weeks successively, as aforesaid, and that we took the oath by law required, previous to said sale.

In witness whereof, we, the said Joseph and Daniel B., have hereunto set our hands and seals, this twenty-third day of July, in the year of our Lord one thousand eight hundred and thirty.

JOSEPH BADGER. [L. S.]
DANIEL B. BADGER. [L. S.]

Signed, sealed and delivered in presence of us—

GRANVILLE TEMPLE WINTHROP,
WM. C. AYLWIN,
Witnesses to Daniel B Badger.
JOHN W. BLANCHARD.
PHILO F. PACKARD.

SUFFOLK, ss., *July* 23, 1830.

Personally appeared the above-named Daniel B. Badger, and acknowledged this instrument to be his free act and deed.

Before me, WM. C. AYLWIN,
Justice of the Peace.

52 SUFFOLK, ss., *August* 23, 1830.

Personally appeared the within-named Joseph Badger, and acknowledged this instrument to be his free act and deed.

Before me, DARIUS BOARDMAN,
Justice of the Peace.

January 15, 1831, at 1 o'clock p. m., received, entered, and examined.

Pr. HENRY ALLINE, *Reg.*

A true copy from the registry of deeds for the county of Suffolk, lib. 350, fol. 179. Attest: HENRY ALLINE, *Reg.*

Deed.—Hart to Badger.

Know all men by these presents that I, Wm. P. Hart, of Boston, in the county of Suffolk, blacksmith, and commonwealth of Massachusetts, in consideration of twenty-eight hundred and fifty dollars, to me paid by Daniel B. Badger, of Boston, in said county and commonwealth aforesaid, trader, the receipt whereof is hereby acknowledged, do by these presents grant, remise, release, and forever quitclaim unto the said Daniel B. Badger, and to his heirs and assigns, all my right, title, interest and estate in and to the following described real estate, to wit: A certain lot of land, with the buildings thereon standing, situated in Distil-House square, so called, in said Boston, and bounded as follows, to wit: in front on the street in said square, there measuring sixty feet; northwesterly on land of the heirs of Jacob Tidd, deceased, there measuring sixty feet and two feet more and two inches; northeasterly on land formerly owned in common by said Daniel, deceased, with others, and set off by warrant of partition from the supreme judicial court, November term, A. D. 1828, unto Jonathan Heath, and there measuring sixty-four feet and six inches; then turning and running southeasterly, and bounded easterly on land of the heirs of Elijah Utley, deceased, twenty-four feet and two inches; then turning at right angles and running easterly two feet one inch and a half; then turning again at right angles and
53 running southerly to said Distil-House square thirty-eight feet. subject to the right mentioned in the return of said warrant of petition of taking water and laying a suction for that purpose from the well in said premises as therefore provided, this being the same estate sold to me by the administrators on Daniel Badger's estate, deceased, recorded with Suffolk deeds, lib. 350, fol. 179, hereby meaning fully to convey all the right, title and interest that Daniel

Badger, deceased, ever had to said estate by any way or means whatsoever, as granted to me by Joseph and Daniel B. Badger, administrators on Daniel Badger's estate, or otherwise owned by me. To have and to hold the above released premises to him, the said Daniel B. Badger, and to his heirs and assigns, to his and their use and behoof forever, so that neither I, the said Wm. P. Hart, nor my heirs, or any other person or persons claiming by, from, or under me or them, or in the name, right or stead of me or them, shall or will by any way or means have, claim or demand any right or title to the above released premises, or to any part or parcel thereof forever. In witness whereof, I, the said Wm. P. Hart, have hereunto set my hand and seal this fourteenth day of March, in the year of our Lord eighteen hundred and thirty-one.

WILLIAM P. HART. [L. S.]

Signed, sealed, and delivered in presence of us—word in the county of erased before signing—

MOSES ADAMS.
SAMUEL B. TITCOMB.

SUFFOLK, SS., *March 28th, A. D.* 1831.

Then personally appeared the above-named Wm. P. Hart, and acknowledged the above instrument to be his free act and deed.

Before me, JOHN JOHNSON,
Justice of the Peace.

April 20th, 1831, at 11 o'clock and 10 minutes a. m., received, entered, and examined.

Pr. HENRY ALLINE, *Reg.*

A true copy from the registry of deeds for the county of Suffolk, lib. 352, folio 54. Attest: HENRY ALLINE, *Reg.*

54 *Deed.—Badger, etc., adm'rs, to Hart.*

Know all men by these presents that we, Joseph Badger, pump and block maker, and Daniel B. Badger, trader, both of Boston, in the county of Suffolk and commonwealth of Massachusetts, administrators of the goods and estate of Daniel Badger, late of said Boston, county and commonwealth aforesaid, gentleman, deceased, intestate, by an order of the supreme judicial court, begun and holden at Boston, in and for said county of Suffolk and Nantucket, on the first Tuesday of March, in the year of our Lord one thousand eight hundred and thirty, was licensed and duly empowered to sell and pass deeds, to convey so much of the real estate of the said deceased as would raise the sum of four thousand six hundred and seventy-six dollars and thirty-three cents, and fifty dollars more for the incidental charges; and whereas we, the said Joseph and Daniel B. Badger, having given public notice of the intended sale, by printing

notifications thereof, agreeably to the direction of said court, three weeks successively in the newspaper called the Boston Daily Advertiser, printed in said Boston, agreeably to the order and direction of said court, and having first taken the oath by law in such cases required, did, on the twelfth day of March, eighteen hundred and thirty-one, pursuant to the license and notice aforesaid, sell at public vendue the whole of the following described real estate, being a certain part of the real estate of said Daniel Badger, deceased, hereafter described, to William P. Hart, of said Boston, blacksmith, reserving to the widow of the said Daniel Badger, deceased, her right of dower to all the premises hereafter described, during her life, for the sum of six hundred and thirty-six dollars, he being the highest bidder therefor, as follows, to wit: a brick dwelling-house, including a shop and all the land under and belonging to the same, numbered one hundred and fifty-one and one hundred and fifty-three, on Broad street, and bounded as follows: on said street, there measuring eighteen feet; then running southerly forty-four feet to land of Wendell; then westerly on stone wall twenty-eight feet; then running southerly, there measuring forty feet to land late of Baxter, jun.; then running easterly partly on land of Baxter, and on a passage-way leading to Broad street, there measuring fifteen feet, with all the privileges and rights contained in deed Cotting to Badger, lib. 249, fol. 136, or however otherwise described or bounded, hereby meaning to convey all the right and title that Daniel Badger, deceased, had to said estate, reserving to Ann Badger, being now the widow of Daniel Badger, deceased, full possession in said premises, as the same has been assigned and set off to Ann Badger, widow of said Daniel, deceased, as and for her dower, as recorded in the probate
55 office, in the city of Boston, and passed the sanction of the judge of said court, on Monday, the twenty-third day of April, in the year of our Lord eighteen hundred and twenty-seven. Therefore, know ye that we, the said Joseph and Daniel B., as aforesaid, by virtue of the power and authority in us vested as aforesaid, and in consideration of the aforesaid sum of six hundred and thirty-six dollars, to us paid by the said William P. Hart, the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto him, the said William P. Hart, and to heirs and assigns forever, all the estate and premises herein above mentioned and described, or however the same is reputed to be bounded or described. To have and to hold the afore-granted premises, with all the privileges and appurtenances to the same belonging, to him, the said William P. Hart, his heirs and assigns forever, to his and their use and behoof forever; and we, the said Joseph and Daniel B., in our said capacity as aforesaid, do hereby covenant with the said William P. Hart, his heirs and assigns, that we was lawfully authorized and empowered to make sale of the same as aforesaid; that we gave public notice of the said intended sale as aforesaid; that we took the oath by law required previous to said sale; that it was necessary the same should be sold for the purposes aforesaid; that the premises were struck off to the said William P. Hart on that day for the sum afore-

said, at a public vendue, as aforesaid, and that he, the said William P. Hart, offered most for the same.

In witness whereof, we, the said Joseph and Daniel B., as aforesaid, have hereunto set our hands and seals this eighteenth day of March, in the year of our Lord one thousand eight hundred and thirty-one.

JOSEPH BADGER. [L. S.]
DANIEL B. BADGER. [L. S.]

[Word printing was interlined before signing.]

Signed, sealed, and delivered in presence of us—
PHILO F. PACKARD.
ROBERT RAY.

SUFFOLK, SS., *March 21st*, 1831.

Then the above-named Joseph Badger and Daniel B. Badger personally acknowledged the above instrument by them subscribed to be their voluntary act and deed.

Before me, DARIUS BOARDMAN,
Justice of the Peace.

56 March 28th, 1831, at six o clock and five minutes p. m., received, entered, and examined.

Pr. HENRY ALLINE, *Reg.*

A true copy from the records of deeds for Suffolk county, lib. 351, fol. 231. Attest:

HENRY ALLINE, *Reg.*

Deed.—Hart to Badger.

Know all men by these presents that I, William P. Hart, of Boston, blacksmith, in the county of Suffolk and commonwealth of Massachusetts, in consideration of seven hundred dollars, same paid by Daniel B. Badger, of Boston, trader, the receipt whereof is hereby acknowledged, do by these presents grant, remise, release and forever quitclaim unto the said Daniel B. Badger, and to his heirs and assigns, all my right, title, interest and estate in and to the following described real estate, to wit: a brick house and land numbered one hundred and fifty-one and one hundred and fifty-three, on Broad street, and bounded as follows: on said street, there measuring eighteen feet; then running southerly forty feet to land of Daniel Adams; then westerly on the stone wall twenty-eight feet; then running southerly, there measuring forty feet, to land late of Baxter, jr.; then running easterly, partly on land of said Baxter, and on a passage-way leading to Broad street, there measuring fifteen feet, with all the rights and privileges belonging to said estate, more fully described and referred to in deed Cotting to Badger, lib. 249, fol. 136, hereby meaning to reserve all the right that Ann Badger has to dower in the said estate, as more fully explained in deed of Joseph and Daniel B. Badger, administrators on the estate of Daniel Badger, deceased, now recorded with Suffolk deeds. To have and to hold

the above released premises to him, the said Daniel B. Badger, and to his heirs and assigns, to his and their use and behoof forever, so that neither I, the said William P. Hart, nor my heirs, or any other person or persons claiming by, from, or under me or them, or in the name, right or stead of me or them, shall or will, by any way or means, have, claim, or demand any right or title to the above released premises, or to any part or parcel thereof forever. In witness whereof, I, the said William P. Hart, have hereunto set my
57 hand and seal this twenty-eighth day of March, in the year of our Lord eighteen hundred and thirty-one.

WILLIAM P. HART. [L. S.]

Signed, sealed, and delivered in presence of us—
MOSES ADAMS.
SAMUEL R. TITCOMB.

SUFFOLK, ss., *March 28th, A. D.* 1831.

Then personally appeared the above-named William P. Hart, and acknowledged the above instrument to be his free act and deed.
Before me,

JOHN JOHNSON,
Justice of the Peace.

September 28th, 1833, at 4 o'clock and twenty minutes p. m., received, entered, and examined.

Pr. HENRY ALLINE, *Reg.*

A true copy from the records of deeds for Suffolk county, lib. 372, fol. 235. Attest:

HENRY ALLINE, *Reg.*

58 *Depositions.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.] The circuit court of the United States within and for the Massachusetts district.

To the Hon. Edward G. Loring or Caleb Wm. Loring, esq., of Boston, in said district, commissioners of the United States circuit court, &c.:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers [to the interrogatories hereunto annexed] of Thomas Richardson, of Boston, witness to be examined on behalf of the complainant, and to be used in a certain cause now pending in said court, wherein Augustus H. Badger and al., plaintiff, in equity, versus Daniel B. Badger and al , defendant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine care-

fully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witnesses, the honorable Roger B. Taney, at Boston, this tenth day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition,
59 either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each fully and clearly.

Circuit court United States.

MASSACHUSETTS DISTRICT, *ss.*, *Oct.*, 1858.

A. H. BADGER *& al.*
vs.
DANIEL B. BADGER *& al.* } In equity.

Interrogatories to be propounded to Thomas Richardson, of Boston, of the firm of H. N. Hooper & Co., founders, a witness to be examined on behalf of the plaintiffs.

1st interrogatory. State your name, age, residence, and occupation.

2d int. State whether or no you are related by marriage to Daniel B. Badger, one of the defendants in the above-entitled suit. If yea, how?

3d int. State whether or no you, as the husband of one of the daughters of the late Daniel Badger, expressed your consent in writing to the sale by the administrators of real estate belonging to the estate of the said Daniel, deceased. If yea, state when, why, and under what circumstances the said assent was given. State also at whose request, if any was made, the same was done, and whether

or no at the time said assent was given in writing you had disposed of your interest in the estate of said Daniel, deceased.

4th. int. If, in answer to the preceding interrogatory, you shall have stated that you had disposed of or agreed to dispose of your interest in said estate, state to whom, upon what considerations and conditions (if any) the same was disposed of.

5th int. State whether or no you ever at any time applied
60 to the said Daniel B. for information in regard to his conduct, doings, and the state of his accounts as administrator. If yea, when, what was his reply, and state whether or no he gave you any information, or exhibited any accounts.

6th int. State whether or no you ever applied to Joseph Badger, co-administrator with said Daniel, for any information in regard to his doings and conduct by administrator, or of the affairs relating to the settlement of the estate. If yea, what reply did he make?

7th int. State whether or no Mrs. Ann Badger, the widow of said Daniel, deceased, ever signed any papers at the request of said Daniel B. relating to the settlement of the estate, to your knowledge. If yea, state whether the same was done freely by her, or under any and what influence of the said Daniel B. Please state fully as far as you know.

8th int. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause. If yea, set forth the same fully and at large in your answer.

By JAS. B. ROBB,
Solicitor for Plaintiffs.

Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

A. H. BADGER *& al.*
vs.
DANIEL B. BADGER *et al.* } In equity.

The respondent, Daniel B. Badger, objects to the interrogatories filed by the complainants to take the deposition of Thomas Richardson, as follows:

To the 3d and 4th interrogatories. Because they call for immaterial and irrelevant testimony, and attempt, by parol, to vary or control a written instrument.

To the 5th, 6th and 7th interrogatories. Because they call for irrelevant, immaterial and incompetent testimony; and also to the 7th, because it is indefinite and refers to papers or documents not connected with the matters in issue.

61 And the respondent files the following cross-interrogatories, *de bene esse:*

1st cross-interrogatory. Do you positively swear that you ever personally had any conversation whatever with the respondent,

Daniel B. Badger, in reference to your signing, or your wife signing, the petition referred to in the 3d direct interrogatory? If yea, state when and where, and who was present, and all that was said.

2d cross-interrogatory. Was not all the conversation in reference to the same between your counsel, Mr. Adan, and Mr. Aylwin, the counsel of said Daniel B. and Mrs. Ann Badger, or between you and said counsel?

3d cross-interrogatory. Had you not, previous to the signing of said petition by you, made a claim on said Daniel B. in behalf of your said wife for a portion of rents which she claimed belonged to her as one of the heirs of Daniel Badger, deceased, and which the said Daniel B. had collected and paid over to the widow of said Daniel Badger, deceased? Had you not made such a claim upon the said Daniel B., through your attorney, Mr. Adan, then of Boston?

4th cross-interrogatory. Did not a settlement take place by which said Daniel B. paid you or your wife a certain sum in full for her claim of rent and for any interest she might have in the estate of said Daniel Badger, deceased, and how much was said sum?

5th cross-interrogatory. Was not said settlement effected by and between Mr. Adan, as your counsel, and Mr. Aylwin, as the counsel of said Daniel B.? Did you and the said Daniel B. have any personal communication whatever, and will you swear that he had any conversation with you in reference to the same until all said papers were passed, viz: your deed of release to the said Daniel B. and the signing of said petition? If you swear that, previous thereto, you had any conversation with the said Daniel B. in reference to the same, then state distinctly when and where said conversations were held and all that was said.

6th cross-interrogatory. Was not all the money that was paid you on said settlement paid on account of said claim of your wife for rents? Do you mean to swear that you were paid money to induce you to sign said petition to the Supreme Court, and that you accepted the bribe? If not, what do you mean?

7th cross-interrogatory. Did not you or your said wife, or you in her behalf, make a claim against her mother, Mrs. Ann Badger, for a mourning picture, worked in silk or worsted, then in the possession of said widow? Was not this claim also settled and arranged at the same time with the claim made upon the said Daniel B. for rents, and is not the paper hereto annexed, marked A, the release then executed by you and your wife to the said Daniel B. and to the said Mrs. Ann Badger? If not, then state fully and distinctly what said paper is, and upon what settlement, if any, it was given,
62 and why was the name of Ann Badger included therein. Are not the signatures to the same the true signatures of yourself and of your wife?

8th cross-interrogatory. Had not the rents of which your said wife claimed a proportion, as aforesaid, been paid over by the said Daniel B. to the widow, Mrs. Ann Badger?

9th cross-interrogatory. Did not the said Daniel B. then claim that he had paid said rents over to Mrs. Ann Badger, and did not Mrs.

Ann Badger admit that she had received and expended the same in the support of herself and the younger children? If you swear that they did not say this, then state what they did say had been done with said rents.

10th cross-interrogatory. If, in answer to the 7th direct interrogatory, you have said that said Mrs. Ann Badger signed any papers, as therein inquired of, at the request of Daniel B. Badger, state distinctly how you know that she ever signed any at his request or under his influence. Do you swear that you have any personal knowledge whatever upon the subject? If so, state what is.

11th cross-interrogatory. Were you ever present at any interview between the said Mrs. Ann Badger and the said Daniel B. when any papers were signed by her? If yea, state what papers they were, when and where were they signed, and who was present.

12th cross-interrogatory. Will you swear that you were ever present at any interview between Mrs. Ann Badger and the said Daniel B. Badger from 1820 to 1835? If yea, when and where was it; who was present? State particularly.

13th cross-interrogatory. Were you or was your wife on friendly terms with her mother, the said Mrs. Ann Badger, from the year 1826 to the time of her death, in 1855; did you, or either of you, visit her during said period? If yea, when and how often? How often did you or your ——— meet with and converse with her during that period?

14th cross-interrogatory. Will you swear that you visited or had any interview, or was present at any interview, betwen yourself, or your wife, or any other person, and the said Mrs. Ann Badger, from 1820 to 1835? If so, state when and where it took place, and who was present.

15th cross-interrogatory. Did you make the acquaintance of your wife at her said mother's house? Did you ever visit or see her at her said mother's house previous to your marriage to her? Did you, after your said marriage, make any visit or call with her upon her said mother previous to the year 1835? If so, when and how often?

16th cross-interrogatory. Is it not true that neither you nor your said wife from the year 1826, or before, up to the year 1835, were in the habit of friendly or familiar intercourse with the said Mrs. Ann Badger? The deponent will please answer directly, and will also observe that no inquiry is made as to the cause, merits, or details of the controversy between him or his said wife and the said Mrs. Ann Badger.

63 17th cross-interrogatory. If, in answer to the 5th direct interrogatory, you have stated that you ever applied to the said Daniel B. for information, state how soon this was after you had married your said wife. Did not the said Daniel B. then refer you to the probate records, and did he not complain of the attempt of a brother-in-law to make trouble as soon as he got into the family, so declined to have further conversation with you? Do you swear that this was not the substance of your conversation together? If you do, then state what was the conversation.

18th cross-interrogatory. Where did you marry your said wife, and was she then on friendly terms with her mother, the said Mrs. Ann Badger, or with the said Daniel B.; did she visit them or either of them?

19th cross-interrogatory. Did not the deed signed by yourself and your wife express all the terms and conditions upon which said conveyance was made? If you have said that it was made upon any other terms or conditions, state whether the same were verbal or in writing; if in writing, produce and annex the same to your deposition; if verbal, then state with whom you made the same. Do you swear that you made them with Daniel B. Badger? Did you have any conversation directly with him upon the subject? If you did, state the same fully.

20th cross-interrogatory. Has any one conversed with you in reference to the subject of your testimony in this case; if so, who? Who applied to you to be a witness in this case? Have not these interrogatories, or the substance of them, or of some of them, been shown or communicated to you; and if so, by whom?

21st cross-interrogatory. Do you not know that some other person or persons besides those named as complainants in this suit are interested directly or indirectly in the same? If yea, name such person or persons.

By E. MERWIN,
His Solicitor.

(A.)

Know all men by these presents that we, Thomas Richardson, of Boston, in the county of Suffolk, brass founder, and Ann J. his wife, (formerly Ann J. Badger,) in consideration of one dollar to us paid by Ann Badger, widow, and Daniel B. Badger and Joseph Badger, traders, all of said Boston, the receipt whereof is hereby acknowledged, do by these presents for ourselves respectively, and for our heirs and representatives, remise, release, and forever discharge the said Ann Badger, Daniel B. Badger, and Joseph Badger, and each of them, of and from all and all manner of action and actions,
64 cause and causes of actions, debts, accounts, contracts, promises, claims, and demands whatsoever, which against the said Ann, Daniel B., and Joseph, or either of them, we, or either of us, ever had or now have by reason of any matter or thing existing prior to the date of these presents, excepting our interest in certain real estate in Hanover street in said Boston, on which there is an engine-house, and excepting the income of said estate.

In witness whereof we have hereunto set our hands and seals this fifth day of May, in the year of our Lord eighteen hundred and thirty.

THOMAS RICHARDSON. [L. S.]
ANN J. RICHARDSON. [L. S.]

Executed and deliverd in presence of—
SARAH S. BLAKE.

Thomas Richardson, the person named in the annexed commission to be examined, appeared before me, Caleb Wm. Loring, one of the commissioners therein named, and the said Richardson being by me first carefully examined and cautioned, and sworn to testify the whole truth, did answer to the interrogatories proposed to him as follows:

To the 1st interrogatory. My name is Thomas Richardson. I am fifty-eight years old; I reside in Boston; I am in the foundry business, one of the members of the firm of H. N. Hooper & Co.

To the 2d interrogatory. I married a sister of Daniel B. Badger.

To the 3d interrogatory. This happened a long time ago, some thirty years ago. I gave my consent in writing to the sale by the administrators of the real estate belonging to the estate of Daniel Badger. I had sued the administrators for a settlement, and after that they made a settlement with me, and under those circumstances I gave the consent. I can't tell when I gave this consent without referring to some records. It was somewhere about 1830. It was done at the request of Daniel B. Badger. I had, at the time I gave my assent, disposed of my interest in the estate of the said Daniel, deceased, and at the time I think I gave my assent, I did so.

To the 4th interrogatory. I disposed of it to Daniel B. Badger, as administrator of the estate. It was upon a sum agreed upon between him any myself; the exact sum I cannot say.

To the 5th interrogatory. I did apply and make application to said Daniel B. in regard to the state of his accounts and his
65 administration, and he refused to give me any satisfactory information, and did not exhibit to me any accounts. I obtained what accounts I did obtain, by means of Mr. John R. Adan, my attorney at law

To the 6th interrogatory. I had very little conversation with Mr. Joseph Badger about the administration. The business was principally done by Daniel B. Mr. Joseph informed me, in answer to my inquiries, that Daniel had the principal control of the business, or something to that effect.

To the 7th interrogatory. I can't say whether Mrs. Ann Badger signed any papers relating to the settlement of said estate.

To the eighth interrogatory. Neither I nor the family have ever been satisfied with the doings of the said Daniel as administrator, but have always complained of them.

And to the cross-interrogatories did answer as follows:

To the 1st cross-interrogatory. I can swear positively that I had conversation with the said Daniel B. Badger in reference to the signing of the petition. I cannot state when and where, and who was present, at this lapse of time. I can't state all that was said. I had sued the said Daniel to get a settlement of the estate; some negotiations took place as to a settlement, and when I made the settlement with him, it was agreed that the petition should be signed, and the conversation was in relation to this settlement.

To the 2d cross-interrogatory. All the conversation was not be-

tween my counsel and the counsel of Mr. Daniel B. Badger. I had conversation with Daniel B. Badger himself.

To the 3d cross-interrogatory. I think I did make such a claim.

To the 4th cross-interrogatory. A settlement did take place which I understood at the time was in full. I don't recollect the exact sum paid by said Daniel B.; it was quite small.

To the 5th cross-interrogatory. The settlement was made between Mr. Adan as my counsel and Mr. Aylwin as counsel of said Daniel B. I will swear that said Daniel B. had communication and conversation with me before said papers were passed. I remember distinctly that one place where I had conversation with said Daniel B. was in the court-house, as things were coming to a crisis; the other places I don't recollect, nor do I recollect the time, but they were before the settlement.

To the 6th cross-interrogatory. The money that was paid to me was paid for settlement of the demands my wife had, not satisfactorily to us, but for the purpose of bringing matters to a close with said Daniel B. Badger. I mean to say that said Daniel B. Badger's object was to get the petition signed, and he couldn't get it signed by me without a settlement.

To the 7th cross-interrogatory. We did make a claim against
66 Mrs. Ann Badger for a mourning picture, but I do not think the paper annexed has any reference to it. She signed a paper to give it up to us at her death, and it was given up to us. This settlement about the picture was made at the same time of the settlement about the rents. I don't know why her name is included in this settlement; we had no claim against her except for the picture, which was arranged as before stated. She may have received some rents, and her name may have been put in for that purpose. The signatures to the paper are genuine.

To the 8th cross-interrogatory. I can't say to my knowledge that they were.

To the 9th cross-interrogatory. Daniel Badger said that he had so paid over said rents, but I never knew Mrs. Badger to admit it.

To the 10th cross-interrogatory. I have not answered that Mrs. Badger signed such papers.

To the 11th cross-interrogatory. I have no recollection of seeing her sign any paper.

To the 12th cross-interrogatory. I went with Mrs. Ann Badger to have an interview with Daniel B. Badger in reference to some things relative to the estate between those times. We commenced the conversation with him, and he ordered me out of the shop, and prevented it. I went at the solicitation of Mrs. Ann Badger. I don't recollect any one else being present; it was at his shop in Broad street. This is the only interview that I now recollect between the parties.

To the 13th cross-interrogatory. We had no interviews with her from the day of our marriage, about 1826, until the day of her death, about 1855. We were not on friendly terms; we did not meet or converse with her during that period.

To the 14th cross-interrogatory. I was not present at any such interview from 1820 to 1835, that I recollect.

To the 15th cross-interrogatory. I did not make the acquaintance of my wife at her mother's house; she did not reside there. I never made any such visit or call.

To the 16th cross-interrogatory. I have already answered this interrogatory.

To the 17th cross-interrogatory. I should think I applied for information within two years from the time I married my wife. I have no recollection of such reference by him to the probate records. I have no recollection of his complaining as inquired in this interrogatory, or declining, for the reason stated, to have further conversation with me. I have already, in answer to the fifth interrogatory, stated what the conversation was.

To the 18th cross-interrogatory. I married my wife somewhere about the year 1826. She was not on friendly terms with either of them, but did occasionally visit Daniel B. Her treatment had been such that it entirely prevented it.

To the 19th cross-interrogatory. If this interrogatory refers to the paper marked A, it does not express all the terms and conditions
67 upon which the same was required; the consideration therein stated of one dollar is not the amount I received. I received a larger sum. Nor does it mention that I was to sign the petition for the sale of the real estate. There was also a paper of a similar character given to me, signed, I believe, by Daniel B., Joseph, and Ann; it was a release of all claims against me and my wife. The conditions were made between Mr. Adan and Mr. Aylwin. Mr. Daniel B. Badger understood them, and I had conversations with him about them, the amount to be paid, and about the signing the petition. I can't now recollect the particulars. I have before stated what I recollect of these conversations.

To the 20th cross-interrogatory. Mr. Robb has conversed with me in reference to my testimony. Mr. Moses Smith applied to me to give my evidence. None of these interrogatories, or the substance of them, have been shown to me.

To the 21st cross-interrogatory. I have no knowledge of any such.

THOS. RICHARDSON.

I, Caleb William Loring, do hereby certify that on the eleventh day of May, A. D. eighteen hundred and fifty-eight, I was attended by the above named Thomas Richardson, who, having been by me first carefully examined and cautioned, and sworn to testify the whole truth in the cause in said commission named, did answer to the interrogatories and cross-interrogatories propounded to him in the said commission, and the testimony given by him was by me reduced to writing in his presence, and that he subscribed the same as and for his deposition in my presence.

I further certify that no one was present at the taking of said deposition besides the witness and the commissioner, and that the

deposition was completed without an adjournment. I further certify that the several interrogatories and cross-interrogatories were put to the witness in their order, and that the directions in the said commission were fully and duly complied with.

I further certify that I am not of counsel or attorney to either of the parties in the cause in and for which the said deposition is taken, nor in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand and seal,
[L. S.] this eleventh day of May, A. D. eighteen hundred and fifty-eight.

C. W. LORING,
Com'r of the Circuit Court of U. S.,
68 *Massachusetts District.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.] The circuit court of the United States, within and for the Massachusetts district.

To any commissioner of the United States circuit court of the city of New York:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the anwers [to the interrogatories hereunto annexed] of Almira A. Badger, Augustus H. Badger, Alfred C. Badger, Jacob Badger, and Mary H. B. Sturgis, all of Brooklyn, Kings county, State of New York, witnesses to be examined on behalf of the plaintiff, and to be used in a certain cause now pending in said court, wherein James W. Badger, plaintiff, *vs.* Daniel B. Badger and al., defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein, enclosed, sealed, and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony wereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this third day of July, in the year of our Lord one thousand eight hundred and sixty-one

H. W. FULLER, *Clerk.*

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either

himself, or by any attorney or agent, nor to communicate by in-
69 terrogatories or suggestions with the deponent whilst giving their deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

The execution of the within commission appears as per schedule hereto annexed.

R. E. STILLWELL,
U. S. Com'r.

Circuit court United States, Massachusetts district—May term, 1861.

JAMES W. BADGER
vs.
DANIEL B. BADGER & ALS.

Interrogatories to be propounded to Almira A. Badger, Augustus H. Badger, Alfred C. Badger, Jacob Badger, and Mary H. B. Sturgis, all of Brooklyn, Kings county, State of New York, on behalf of the pl'ff in the above entitled cause.

Interrogatories to Almira A. Badger.

1st interrogatory. Please state your name, age, and place of residence.

2d int. Whether or not you are related to the plaintiff in this case, and how?

3d int. Whether or not you were related to the late Daniel B. Badger, of the city of Boston, and how?

4th int. Whether or not you resided in the city of Boston between the years 1820 and 1831, inclusive. If yea, with whom and in what place or places, and at what periods respectively in said places?

5th int. If you shall have stated in answer to the preceding interrogatory that you resided with your mother, the late Mrs.
70 Ann Badger, please state the names of the children who were living with her from time to time during that period, and what was the state of David J. Badger's health.

6th int. Whether or not your mother kept boarders during that period, and whether or not she had any other and what means of subsistence, to your knowledge?

7th int. Whether or not the said Daniel B., to your knowledge, ever rendered any and what assistance to your mother in the support of the family during that period, and whether or not he was of any and what ability to do so?

8th int. Whether or not you were present at a conversation be-

tween your mother and the said Daniel B. when the subject of the appointment of administrators of your deceased father's estate was spoken of? If yea, please state what was said by each and both of them, and whether or not you heard your mother at that or any other time urge the said Daniel B. to act in that capacity. If yea, state what was said.

9th int. Whether or not the said Daniel B. and the said Joseph, or either of them, to your knowledge, reported to your mother from time to time during the above period their doings as administrators, or consulted with her in reference thereto? Whether the said Daniel B. was in the habit of visiting the house, or how otherwise?

10th int. Were you present at any time when the said Daniel B. requested your mother to sign any and what papers? If yea, please state when and where, and what was said between them. State the occasion or occasions as nearly as you can, and what took place, and whether or not your mother ever read such paper or papers.

11th int. Whether or not you were present when the said Daniel B. requested your mother to sign any paper relating to the sale of real estate belonging to the estate of your father. If yea, when was it, according to the best of your recollection? What was said and done by him? What was said by your mother? Who else was present? What was said by each and all of you, and whether or not your mother heard such paper read, or read the same; and whether or not she requested said Daniel B. to leave the same; and whether or not she signed the same; and whether or not her eye-sight was good?

12th int. Whether or not the said Daniel B. requested you to sign such a paper? If yea, whether or not you then signed the same?

13th int. If in answer to the preceding interrogatory you shall have stated that when he first applied to you you refused to sign such paper, state whether or not you afterwards did sign the same, and the circumstances under which you did so sign, and whether or not the said Daniel B. said anything about having procured the signature of your brother Jacob, and your sister, Mrs. Richardson, to said paper, or their having withdrawn objection thereto. If yea, what was said upon that subject?

14th int. Whether or not you have ever heard the said
71 Daniel B. say anything about his rights as the oldest son to your father's estate. If yea, when? How often and on what occasions, and what did he say?

15th int. Whether or not you ever heard your mother say anything to the said Daniel B. upon the subject of his conduct as administrator? If yea, when and what? Whether or not anything was said by her about employing a lawyer? If, what?

16th int. Whether or not you know of your own knowledge, or from conversations between the said Daniel B. and other persons in your hearing, or from anything the said Daniel B. has said to you upon the subject, anything about the attempt to sell the estate in North Federal court, in the month of February, 1831, and also the alleged sale of the same again in the month of March, 1831? If yea, please

state fully all you know upon the subject, and what you heard the said Daniel B. say about it. Whether or not the house was occupied at that time, and in whose possession was the key?

17th int. Whether or not, in consequence of information which your mother received about the sale of the estate in North Federal Court, in the month of March, 1831, she said anything to said Daniel B. If yea, what did she say to him? Whether or not she told him anything she had been informed, by a relative residing in North Federal Court, about said alleged second sale. If yea, what was it, and what reply did he make?

18th int. Whether or not you ever heard any conversation between the said Daniel B. and your mother in relation to the assignment of dower. If yea, when, and what was said by each of them?

19th int. Whether or not you at any time, and when, heard any conversation between your mother and Samuel D. Parker, esq., of Boston, counsellor-at-law, in relation to the conduct of said Daniel B. as administrator. If yea, state the circumstances under which said conversation took place, and what was said by said Parker.

20th int. Whether or not you know who managed the real estate and collected the rents belonging to the estate of your father after his death. If yea, who? And whether or not your mother received any and what amount of the same?

21st inst. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in the cause? If yea, set forth the same fully and at large in your answer.

JAS. W. BADGER,
By JAS. B. ROBB, *Att'y.*

72 Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

JAMES W. BADGER
vs.
E. B. BADGER *et al.*

E. B. Badger, one of said respondents, objects to all of the interrogatories filed by complainant to Almira A. Badger, from the 6th to the 20th inclusive, as leading, incompetent, and immaterial, and files the following cross-interrogatories *de bene esse:*

1st cross-interrogatory. Please state the day, month, and year of your birth.

2d. Were you not one of the parties to the former suit brought against your brother, Daniel B. Badger, and al., in this court?

3d. Are you not interested in the present suit? If anything is recovered in this suit, do you not expect to receive your proportion? If you say that you do not so expect, state why not.

4th. If you say that you have assigned or sold your interest,

answer upon your oath, were you not requested so to do in order that you might be a witness in this suit? Was it not agreed, or do you not understand and expect, that you are to receive your share of whatever may be recovered, notwithstanding said assignment?

5th. How came you to make a deed or assignment of your interest? Who requested you to do it? Was anything paid you therefor; and if so, what, and by whom? And if anything was paid you, did you give a receipt or any writing therefor, and to whom? If so, annex a true copy of the same. Did you not agree to pay back whatever was paid you in case the plaintiff did not recover in this suit; or if not, what was the agreement or understanding upon that point?

5th. What became of the first suit against your brother, Daniel B., and al., in this court?

6th. Did you agree to the former suit against Daniel B. Badger and al., in this court, being dismissed? If so, when did you agree to it? When did you first know that it was dismissed? Who asked you to agree to have it dismissed, and for what reason was it dismissed?

7th. Did you pay the costs, or any part thereof, of the former suit? Who employed and paid the counsel of plaintiffs in the former suit, and who employ and pay them in this suit? Upon what terms was said first suit carried on? State who are to share in whatever may be recovered by this suit.

73 8th. If you answer that your mother kept boarders between the years 1820 and 1831, state particularly in what year or years she kept boarders. Give what street and house, and give the names of such boarders.

9th. If you say that your brother, Daniel B., did not render any assistance to your mother, state how you know that he did not? Do you swear on your personal knowledge that he did not, or do you only mean that you did not personally know anything about it?

10th. Do you not know, and did you not hear your mother say that said Daniel B. paid her frequently, from time to time, sums of money to assist in the support of the family? Was not said Daniel B. during said period in active business?

11th. If you have answered that you heard a conversation, as inquired of in the 8th direct interrogatory, please state the time when such conversation took place, the month and the year. State where it was and who was present. Do you undertake to swear upon your oath to the language used in such conversation?

12th. State how you know that neither Daniel B. nor Joseph Badger from 1820 to 1831 repeated to your mother their doings as administrators, *or* inquired of in the 9th direct interrogatory. Were they during said period on friendly or unfriendly terms with your mother?

13th. If you have answered the 10th and 11th direct interrogatories affirmatively, please state particularly to what papers you refer, and how you come to recollect the same. Have you seen said papers, or either of them, since, or copies of them, or either of them, and of which; and if a copy, how do you know that it was a true copy?

Where did you see said paper or copy, and when? Who showed it to you? How came you to know that it was important to get rid of said paper or of said signature? Who told you, if any one, that it was important or would be useful to show how your mother or you came to sign these papers?

14th. Have you had furnished you, and if so, by whom, a printed copy of the defendant Badger's answer in this case, or have you not seen, read, or had in your possession such copy?

15th. Have you not read, or heard read, or has not said answer or the substance of it been stated to you in order that you might think over and prepare your testimony in answer to the same?

16th. Have you not been testifying from memorandum or memoranda; if so, who prepared the same for you? If you say you prepared it, state when, and at whose request, and how you happened to prepare the same? How did you know upon what points or subject you would be questioned in these interrogatories?

17th. Have you not seen, read, or heard read some or all of these direct or cross-interrogatories before the same were put to you in their order by the commissioner, or has not the substance of them or some of them been stated to you verbally or in writing; and if so, by by whom, and when?

74 18th. Have you not seen, read, or heard read some or all of the direct or cross-interrogatories prepared or filed to take the depositions of your brothers and sisters in this case, or of some of them, or has not the substance of them, or of some of them, been stated to you; if so, by whom, and when?

19th. Have either of your brothers or sisters given their depositions yet in this case? And if so, state which of them.

20th. Have not they, or some one of them, and which, stated to you in whole or in part what questions were put to them and what testimony they gave or should give in their depositions?

21st. If, in answer to the 20th direct interrogatory, you have undertaken to state what amount your mother received from the rent of the real estate, state how you know, and how you can swear to the amount which she received.

22d. Where, and with whom, do you now live?

23d. Were you upon friendly terms with your brother Daniel B.? When did you cease to be on friendly terms with him? When did you last visit him or have intercourse with him?

25th. Were you familiar with your mother's handwriting, and did you know her signature?

26th. Have you not seen, read, or heard read, or stated the depositions or a part thereof, or the substance of the whole or a part thereof given by your brothers and sisters in this case, or by some one or more of them, and which?

27th. Please state whether or not, in 1830 and 1831, your mother was an active, intelligent woman or otherwise.

28th. If, in answer to the 11th direct interrogatory, you say your mother's eyesight was poor, please state particularly when it was,

how long this trouble lasted, how severe it was. Did it prevent her from reading or her usual avocations? Did she have medical attendance for it, and who was the doctor?

E. MERWIN,
Solicitor for Respondent E. B. Badger.

75 Circuit court United States.

MASSACHUSETTS DISTRICT, *May Term*, 1861.

JAMES W. BADGER
vs.
DANIEL B. BADGER *et al.*

Interrogatories to Augustus H. Badger.

1st interrogatory. Please state your name, age, place of residence, and business.

2d int. Whether or not you are related to the plaintiff in this case, and how?

3d int. Whether or not you were related to the late Daniel B. Badger, of the city of Boston, and how?

4th int. Whether or not you resided in the city of Boston between the years 1820 and 1831, inclusive? If yea, with whom and in what place or places, and at what periods, respectively, in said places?

5th int. Whether or not your mother kept boarders during that period, and whether or not she had any other, and what, means of subsistence to your knowledge?

6th int. Whether or not the said Daniel B, to your knowledge, ever rendered any, and what, assistance to your mother in the support of the family during that period, and whether or not he was of any, and what, ability to do so?

7th int. Whether or not you ever applied to the said Daniel B. for money on behalf of your mother? If yea, under what circumstances, and with what results? What did he say, and what did he do?

8th int. Whether or not the said Daniel B. and the said Joseph, or either of them, to your knowledge, reported to your mother from time to time, during the above period, their doings as administrators, or consulted with her in reference thereto? Whether the said Daniel B. was in the habit of visiting the house, or how otherwise?

9th int. Were you present at any time when the said Daniel B. requested your mother to sign any and what papers? If yea, please state when and where, and what was said between them; state the occasion or occasions, as nearly as you can, and what took place, and whether or not your mother ever read such paper or papers; also, whether or not you ever heard him say anything, and what, about paying a debt due to William Jones, if she would sign a certain paper. If yea, what did he say upon that subject?

76 10th int. Whether or not you have ever heard the said Daniel B. say anything about his rights, as the oldest son, to your father's estate? When and how often, and on what occasions, and what did he say?

11th int. Whether or not you have ever heard your mother say anything to the said Daniel B. upon the subject of his conduct as administrator? If yea, when and what; whether or not anything was said by her about employing a lawyer? If yea, what?

12th int. Whether or not you ever heard any conversation between said Daniel B. and your mother, in relation to the assignment of dower? If yea, when, and what was said by each of them?

13th int. Whether or not you heard any conversation between your mother or any other of the members of the family and said Daniel B., about applying for the appointment of any other person in his place as administrator? If yea, when was it, what was said by either and all of them, and whether or not the said Daniel B. said anything, and what, as to what he had done, or would do, if any attempt was made to supersede him?

14th int. Whether or not you know who managed the real estate and collected the rents belonging to your father's estate after his death? If yea, who, and whether or not your mother received any, and what amount, of the same?

15th int. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAMES W. BADGER,
By JAMES B. ROBB, *Attorney.*

Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

JAMES W. BADGER
vs.
E. B. BADGER *et al.*

E. B. Badger, one of said respondents, objects to all of the interrogatories filed by the complainant to Augustus H. Badger, from the 5th to the 14th, inclusive, as leading, immaterial, and incompetent, and files the following cross-interrogatories *de bene esse:*

1st interrogatory. Please state your precise age.

2d int. Were you not one of the parties complainant to the former suit brought against your brother Daniel B. Badger and al. in this court?

77 3d. Are you not interested in the present suit? If anything is recovered in this suit, do you not expect to receive your proportion? If you say that you do not so expect, state why not.

4th. If you say that you have assigned or sold your interest,

answer upon your oath, were you not requested so to do in order that you might be a witness in this suit? Was it not agreed, or do you not understand or expect, that you are to receive your share, or some share, of whatever may be received, notwithstanding said assignment?

5th. How came you to make a deed or assignment of your interest? Who requested you to do it? Was anything paid you therefor, and if so, what, and by whom? And if anything was paid you, did you give a receipt or any writing therefor, and to whom? If so, annex a true copy of the same? Did you not agree to pay back whatever was paid or given you, in case the plaintiff does not recover in this suit? Or if not, what was the agreement or understanding upon that point?

6th. What became of the first suit against your brother Daniel B. Badger and *al.* in this court?

7th. Did you agree that the said former suit should be dismissed? If so, when did you agree to it? When did you first know that it was dismissed? Who asked you to agree to dismiss it, and why did you agree to dismiss it, if you did agree?

8th. Did you pay the costs or any part thereof of the former suit? Who employed and paid the plaintiff's counsel in the former suit, and who employ and pay him in this suit? Upon what terms was said first suit carried on, and is the present suit carried on?

9th. Do you not furnish, or have you not agreed to furnish or to bear some portion of the expense of carrying on this suit? Is there an agreement or understanding, expressed or implied, between you and the plaintiff, or between you and some other person or persons, and who, that you will pay, bear, or be responsible for some portion of the expenses of carrying on this suit? State fully such agreement or understanding.

10th. If the plaintiff recovers in this suit, will it not be to your pecuniary advantage, and if he does not, will it not be to your pecuniary loss? Answer particularly as to each.

11th. If you have answered the preceding question negatively, then state why it will not be to your advantage or loss as inquired of?

12th. Is not James W. Badger, the complainant in this suit, a clerk in your employ, or has he not been in your employ, and how long, and if he is not now, when did he cease to be?

13th. If you answer to the 5th direct interrogatory, that your mother kept boarders between the years 1820 and 1831, state how you know it, and particularly in what year or years she kept boarders, in what street and house; and give the names of such boarders. Do you testify from your personal knowledge and recollection?

14th. If you say that your brother Daniel B. did not render any assistance to your mother, state how you know that he did
78 not? Do you swear on your personal knowledge that he did not, or do you only mean that you did not personally know anything about it?

15th. Do you not know that said Daniel B. paid your mother rent up to the time of her death, and do you not also know, or have you

not heard your mother say, that said Daniel B. paid her frequently, and from time to time sums of money to assist in the support of the family? Was not said Daniel B. during said period in active business?

16th. If you have answered that you heard a conversation as inquired of in the 9th direct interrogatory, state the date of same, giving month and year, also the place where, and who was present? Do you undertake to swear to the language used in such conversation, and that you have stated all that was said?

17th. Please state how you know that neither Daniel B. nor Joseph Badger, from 1820 to 1831, reported to your mother their doings as administrators, as inquired of in the 8th direct interrogatory? Were they, during said period, on friendly or unfriendly terms with your mother?

18th. If you have answered the 9th direct interrogatories affirmatively, please state particularly to what papers you refer, describe them, and how you happen to recollect the same; have you seen said papers or either of them, or copies of them, or of either of them, and of which, and when? And if a copy, how do you know that it was a true copy? Where did you see said copy, and who showed it to you?

18th. How do you know that your mother did not read or hear read said paper or papers, before signing? Did you read or hear read said paper or papers? If not, then how do you identify the paper?

19th. Have you had furnished to you, and if so, by whom, a printed copy of the defendant Badger's answer in this case, or have you seen, read, or had in your possession such copy?

20th. Have you not read, or heard read, or has not said answer, or the substance of it, been stated to you in order that you might think over and prepare your testimony in answer to the same?

21st. Have you not testified in whole or in part from some memorandum? If so, who prepared it for you? If you prepared it, state when, and at whose request, and how you happened to prepare the same? How did you know upon what points or subject you would be questioned in these interrogatories?

21st *(b)*. Were you familiar with your mother's handwriting, and did you know her signature?

22d int. Were you or not on friendly terms with your brother Daniel B. Badger, during his life time? If not, how long were you not? Did you visit his house, and when did you last visit it?

23d. Have either of your brothers or sisters given their depositions yet, in this case? And if so, state which of them.

79 24th. Have not they or some of them, or some one else, and who, stated to you, in whole or in part, what questions were put to them, or what testimony they had given or should give in their depositions?

25th. Have you not seen, or read, or heard read, some or all these direct or cross interrogatories, before the same were put to you in their order by the commissioner? Has not the substance of them

or of some of them been stated to you verbally, or in writing? If so, by whom, and when?

26th. Have you not seen, read, or heard some or all of the direct or cross interrogatories prepared or filed to take the depositions of your brothers and sisters, or of some of them, in this case? Has not the substance of them, or of some of them been stated to you? If so, by whom and when?

27th. Have you not seen, read, or heard read or stated, the depositions, or a part thereof. or a substance of the whole, or a part thereof, given by your brothers and sisters, in this case, or by some one or more of them, and which?

E. MERWIN,
Solicitor for Respondent E. B. Badger.

Circuit court United States.

MASSACHUSETTS DISTRICT, *ss.*, *May term*, 1861.

JAMES W. BADGER
vs.
DANIEL B. BADGER *et al.*

Interrogatories to Alfred C. Badger.

1st interrogatory. Please state your name, age, residence, and business.

2d int. Whether or not you are related to the plaintiff in this case, and how?

3d int. Whether or not you were related to the late Daniel B. Badger, of the city of Boston, and how?

4th int. Whether or not you resided in the city of Boston between the years 1820 and 1831, inclusive. If yea, with whom and in what place or places, and at what periods, respectively, in said places?

5th int. Whether or not your mother kept boarders during
80 that period, and whether or not she had any other and what means of subsistence to your knowledge?

6th int. Whether or not the said Daniel B. to your knowledge ever rendered any and what assistance to your mother in the support of the family during that period, and whether or not he was of any and what, ability to do so?

7th int. Whether or not you ever applied to said Daniel B. for money on behalf of your mother. If yea, under what circumstances and with what results? What did he say, and what did he do? and whether or not you ever asked him to pay any money due to her from him on a note which your mother held against him; and whether or not he ever paid the same?

8th int. Were you present at any time when the said Daniel B. requested your mother to sign any and what papers. If yea, please state when and where and what was said between them; state the occasion or occasions as nearly as you can, and what took place, and whether or not your mother ever read such paper or papers. Did

you ever hear him say anything, and what, about paying a debt due to William Jones if she would sign a certain paper? If yea, what did he say upon that subject?

9th int. Whether or not you ever heard your mother say anything to said Daniel B. upon the subject of his conduct as administrator. If yea, when and what? whether or not anything was said by her about employing a lawyer. If yea, what?

10th int. Whether or not you know of your own knowledge or from conversations between the said Daniel B. and other persons in your hearing, or from anything the said Daniel B. has said to you upon the subject, anything about the attempt to sell the estate in North Federal Court in the month of February, 1831, and also the alleged sale of the same again in the month of March, 1831. If yea, please state fully all you know upon the subject, and what you heard the said Daniel B. say about it? Whether or not you were present at any time, and when, at an alleged sale of the North Federal Court estate. If yea, what took place? State all you know about it.

11th int. Whether or not, in consequence of information which your mother received about the sale of the estate in North Federal Court in the month of March, 1831, she said anything to said Daniel B. If yea, what did she say to him? Whether or not she told him what she had heard, and whether or not she told him anything she had been informed by a relative residing in North Federal Court. If yea, what was it, and what reply did he make?

12th int. Whether or not you know who managed the real estate, and collected the rents belonging to the estate of your father after his death. If yea, who, and whether or not your mother received any and what amount of the same?

13th int. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at
81 issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in the case? If yea, set forth the same fully and at large in your answer.

JAS. W. BADGER,
By JAS. B. ROBB, *Att'y.*

Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

JAMES W. BADGER
vs.
E. B. BADGER *et al.*

E. B. Badger, one of said respondents, objects to all of the interrogatories filed by the complainant to Alfred C. Badger, from the 5th to the 12th, inclusive, as leading, irrelevant, and incompetent, and files the following cross-interrogatories *de bene esse:*

1. Please state your precise age.

2. Were you not one of the parties complainant to the former suit brought against your brother Daniel B. Badger and al. in this court?

3. Are you not interested in the present suit? If anything is recovered in this suit, do you not expect to receive your proportion? If you say that you do not so expect, state why not.

4. If you say that you have assigned or sold your interest, answer upon your oath, were you not requested so to do in order that you might be a witness in this suit? Was it not agreed, or do you not understand or expect, that you are to receive your share or some share of whatever may be recovered, notwithstanding said assignment?

5. How came you to make a deed or assignment of your interest? Who requested you to do it? Was anything paid you therefor, and if so, what and by whom; and if anything was paid you, did you give a receipt or any writing therefor, and to whom? If so, annex a true copy of the same. Did you not agree to pay back whatever was paid or given you in case the plaintiff does not recover in this suit; or if not, what was the agreement or understanding upon that point?

6. What became of the first suit against your brother Daniel B. Badger and al. in this court?

82 7. Did you agree that the said former suit should be dismissed? If so, when did you agree to it; when did you first know that it was dismissed? Who asked you to agree to dismiss it; and why did you agree to dismiss it, if you did agree?

8. Did you pay the costs or any part thereof of the former suit? Who employed and paid the plaintiff's counsel in the former suit, and who employ and pay him in this suit? Upon what terms was said first suit carried on, and is the present suit carried on?

9. Do you not furnish or have you not agreed to furnish or to bear some portion of the expense of carrying on this suit? Is there an agreement or understanding, expressed or implied, between you and the plaintiff, or between you and some other person or persons, and who, that you will pay, bear, or be responsible for some proportion of the expenses of carrying on this suit? State fully such agreement or understanding.

10. If the plaintiff recovers in this suit, will it not be to your pecuniary advantage; and if he does not, will it not be to your pecuniary loss? Answer particularly as to each.

11. If you have answered the preceding question negatively, then state why it will not be to your advantage or loss as inquired of.

12. If you answer to the 5th direct interrogatory that your mother kept boarders between the years 1820 and 1831, state particularly in what year or years she kept boarders, in what street and house, and give the names of such boarders, and state how you happen to have this information. Do you testify from your personal knowledge and recollection?

13, *(a.)* If in answer to direct interrogatories you say that your brother Daniel B. did not render any assistance to your mother, state how you know that he did not. Do you swear on your personal

knowledge that he did not, or do you only mean that you did not personally know anything about it?

13, *(b.)* Were you familiar with your mother's handwriting, and did you know her signature?

14. Do you not know that said Daniel B. paid your mother rent up to the time of her death; and do you not also know, or have you not heard your mother say, that said Daniel B. paid her, from time to time, sums of money to assist in the support of the family? Was not said Daniel B., during said period, in active business?

15. If you have answered that you were present at conversations, as inquired of in the 8th and 9th direct interrogatories, state the dates of each, giving month and year; also the place where, and who was present. Do you undertake to swear to the language used in such conversation, and that you have stated all that was said?

16. How do you know that your mother did not read or hear read the paper or papers inquired of in the 8th direct interrogatory before she signed the same? Did you read or hear read said paper
83 or papers?

17. If you did not read or hear read said paper or papers, then state how you identify the same.

18, *(a.)* Have you seen said papers or either of them, or copies of them or of either of them since; and of which and when, where did you see them, and who showed them to you, and how do you know that those you have since seen were the original or true copies of the identical paper or papers which your mother signed without reading or hearing read?

18, *(b.)* Were you familiar with the handwriting of your mother, and did you know her signature?

19. Have you not had furnished to you, and if so by whom, a printed copy of the defendant Badger's answer in this case, or have you seen, read, or had in your possession such copy?

20. Have you not read it or heard it read, or has not said answer or the substance of it been stated to you, in order that you might think over and prepare your testimony in answer to the same?

21. Have you not testified, in whole or in part, from some memorandum? If so, who prepared it for you? If you prepared it, state when and at whose request, and how you happened to prepare the same. How did you know upon what points or subject you would be questioned in these interrogatories?

22. Were you on friendly terms with your brother, Daniel B. Badger, during his lifetime? When did you cease to be on friendly terms with him? When did you last visit or speak to him?

23. Have either of your brothers or sisters given their depositions yet in this case? If so, state which of them.

24. Have they not, or some of them, or some other person, and who, stated to you, in whole or in part, what questions were put to them, or what testimony they had given or should give in their depositions?

25. Have you not seen, or read, or heard read some or all of these direct or cross interrogatories before the same were put to you in

their order by the commissioner? Has not the substance of them, or of some of them, been stated to you verbally or in writing? If so, by whom and when?

26. Have you not seen, read, or heard some or all of the direct or cross interrogatories prepared or filed to take the depositions of your brothers and sisters, or of some of them, in this case? Has not the substance of them, or of some of them, been stated to you? If so, by whom and when?

27. Have you not seen or read, or heard read or stated, the depositions or a part thereof, or the substance of the whole or of a part thereof, given by your brothers or sisters in this case, or by some one or more of them, and which?

E. MERWIN,
Solicitor for Badger, respondent.

84 Circuit court United States.

MASSACHUSETTS DISTRICT, *May term*, 1861.

JAMES W. BADGER
vs.
DANIEL B. BADGER *et al.*

Interrogatories to Jacob Badger.

1st. Please state your name, age, residence, and business.

2d. Whether or not you are related to the plaintiff in this case, and how.

3d. Whether or not you were related to the late Daniel B. Badger, of the city of Boston, and how.

4th. Whether or not you resided in the city of Boston between the years 1820 and 1831, inclusive. If yea, with whom and in what place or places, and at what periods, respectively, in said places?

5th. Whether or not your mother kept boarders during that period, and whether or not she had any other, and what, means of subsistence, to your knowledge.

6th. Whether or not the said Daniel B., to your knowledge, ever rendered any and what assistance to your mother in the support of the family during that period, and whether or not he was of any and what ability to do so.

7th. Whether or not you were present at a conversation between your mother and the said Daniel B. when the subject of the appointment of administrator of your deceased father's estate was spoken of. If yea, please state what was said by each and both of them, and whether or not you heard your mother, at that or any other time, urge the said Daniel B. to act in that capacity. If yea, state what was said by her upon the subject.

8th. Were you present at any time when the said Daniel B. requested your mother to sign any and what papers? If yea, please state when and where, and what was said between them. State the occasion or occasions as nearly as you can, and what took place, and whether or not your mother ever read such paper or papers.

9th. Whether or not you were present when the said Daniel B. requested your mother to sign any paper relating to the sale of real estate belonging to the estate of your father. If yea, when was it, according to the best of your recollection? What was said and done by him? What was said by your mother? Who else was present? What was said by each and all of you, and whether or not
85 your mother heard said paper read, or read the same, and whether or not she requested said Daniel B. to leave the same, and whether or not she signed the same, and whether or not her eyesight was good.

10th. Whether or not the said Daniel B. requested you to sign such a paper? If yea, whether or not you *then* signed the same?

11. If in answer to the preceding interrogatory you shall have stated that when he *first* applied to you, you refused to sign such paper, state whether or not you afterwards did sign the same, and the circumstances under which you did so sign, and whether or not you told any member of the family the reasons which induced you to sign? If not, why not?

12th. Whether or not you have ever heard the said Daniel B. say anything about his rights, as the eldest son, to your father's estate. If yea, when, how often, and on what occasions, and what did he say?

13. Whether or not you ever heard any conversation between the said Daniel B. and your mother in relation to the assignment of dower? If yea, when, and what was said by each of them?

14th. Whether or not you know anything about the sale of the Distil-house Square estate in the year 1830? If yea, state all you know relating to the same. Whether or not you heard the crier of the city of Boston crying said sale? If yea, what was his name, in what part of the city, and what did he say? Did you have any conversation with him in relation thereto? If yea, where was it, and what was said by each of you? How far was said Distil-house Square estate from State street in said city? Whether or not you were present at said sale? If yea, what took place then and there, what was the state of the weather before and at the time of said sale? Whether or not you had any conversation with the auctioneer in relation to said sale? If yea, what was said? Whether or not the sale took place at the hour appointed, or how otherwise, and on what part of the premises, inside or outside of the building?

15th. Whether or not you afterwards had any conversation with said Daniel B. in relation to said sale? If yea, what was said? whether or not he said anything about the purchase of said estate for his own benefit? If yea, what, whether or not he said anything about the delivery of deeds relating thereto? If yea, what?

16. Did you know William P. Hart, the alleged purchaser of said estate? If yea, what was his business, where did he reside, and with whom? Whether or not was he related to the said Daniel B. or to his family, and whether or not he was a man of property?

17. Did you know Daniel Gilpatrick at or about that time? If yea, what was his business, with whom, and for whom did he work, where

did he reside, and with whom, and whether or not the said Hart, the said Gilpatrick and the said Daniel B. were then intimate with each other?

18th. Whether or not you know who managed the real
86 estate and collected the rents belonging to the estate of your father after his death? If yea, who, and whether or not your mother received any, and what amount, of the same? Please state if you can what the said several estates rented for per year.

19th. Whether or not the said Daniel B. ever requested you to sign any other, and what, papers? If yea, whether or not did you so sign? If not, why not.

20th. Whether or not you know if David J. Badger ever examined any accounts of the administrators of your deceased father's estate? If yea, what accounts, and whether or not you ever examined any such accounts? State fully.

21st. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAMES W. BADGER,
By JAMES B. ROBB, *Attorney*.

Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

JAMES W. BADGER
vs.
E. B. BADGER *et al.*

E. B. Badger, one of said respondents, objects to all of the interrogatories filed by the complainant to Jacob Badger, from the 5th to the 20th, inclusive, as leading, irrelevant, and incompetent, and files the following cross-interrogatories *de bene esse:*

1. Please state your precise age.

2. Were you not one of the parties complainant to the former suit brought against your brother Daniel B. Badger and al. in this court?

3. Are you not interested in the present suit? If anything is recovered in this suit do you not expect to receive your proportion? If you say that you do not so expect, state why not?

4. If you say that you have assigned or sold your interest, answer upon your oath, were you not requested to do so in order that
87 you might be a witness in this suit? Was it not agreed or do you not understand or expect that you are to receive your share, or some share, of whatever may be recovered, notwithstanding said assignment?

5. How came you to make a deed or assignment of your interest? Who requested you to do it? Was anything paid you therefor; and if so, what and by whom? And if anything was paid you, did you give a receipt or any writing therefor, and to whom? If so, annex a true copy of the same. Did you not agree to pay back whatever was

paid or given you in case the plaintiff does not recover in this suit? Or if not, what was the agreement or understanding upon that point?

6. What became of the first suit against your brother Daniel B. Badger, in this court?

7. Did you agree that the said former suit should be dismissed? If so, when did you agree to it? When did you first know that it was dismissed? Who asked you to agree to dismiss it, and why did you agree to dismiss it, if you did agree?

8. Did you pay the costs or any part thereof of the former suit? Who employed and paid the plaintiff's counsel in the former suit, and who employ and pay him in this suit? Upon what terms was said first suit carried on, and is the present suit carried on?

9. Do you not furnish, or have you not agreed to furnish or to bear some part of the expense of carrying on this suit? Is there an agreement or understanding, express or implied, between you and the plaintiff, or between you and some other person or persons, and who, that you will pay, bear, or be responsible for some proportion of the expenses of carrying on this suit? State fully such agreement or understanding.

10. If the plaintiff recovers in this suit, will it not be to your pecuniary advantage, and if he does not, will it not be to your pecuniary loss? Answer particularly as to each.

11. If you have answered the preceding question negatively, then state why it will not be to your advantage or loss as inquired of? State who are to share in whatever may be recovered by this suit.

12. If you answer to the 5th direct interrogatory, that your mother kept boarders between the years 1820 and 1831, state particularly in what year or years she kept boarders, in what street and house; and give the name of such boarders, and state how you happen to have this information. Do you testify from your personal knowledge and recollection?

13. If in answer to direct interrogatories, you say that your brother Daniel B. did not render any assistance to your mother, state how you know that he did not. Do you swear on your personal knowledge that he did not, or do you only mean that you did not personally know anything about it?

14. Do you not know that said Daniel B. paid your mother rent up to the time of her death, and do you not also know, or have you not heard your mother say, that the said Daniel B. paid her,
88 from time to time, sums of money to assist in the support of the family? Was not said Daniel B. during said period in active business?

15. If you have answered that you were present at conversations as inquired of in the 8th and 9th direct interrogatories, state the dates of each, giving month and year, also the place where, and who was present. Do you undertake to swear to the language used in such conversations, and that you have stated all that was said?

16. How do you know that your mother had not read or heard read the paper or papers inquired of in the 8th and 9th direct inter-

rogatories before she signed the same? Did you then read or hear said paper or papers read?

17. If you did not then read or hear read the paper or papers which your mother then signed, state how you identify said papers.

18. Have you seen said papers, or either of them, or copies of them, or of either of them since, and of which and when? Where did you see them, and who showed them to you, and how do you know that those you have since seen were the original or true copies of the identical paper or papers which your mother signed without reading or hearing read?

19. Were you familiar with the handwriting of your mother, and knew her signature?

20. Have you not had furnished to you, and if so, by whom, a printed copy of the defendant Badger's answer in this case, or have you seen read, or had you in your possession such copy?

21. Have you not read it, or heard it read, or has not said answer, or the substance of it, been stated to you in order that you might think over and prepare your testimony in answer to the same?

22. Have you not testified, in whole or in part, from some memorandum? If so, who prepared it for you? If you prepared it, state when, and at whose request, and how you happened to prepare it. How did you know upon what points or subject you would be questioned in these interrogatories?

23. Were you on friendly terms with your brother Daniel B.? When did you cease to be on friendly terms with him? When did you last visit or speak to him?

24. Have either of your brothers or sisters given their depositions yet in this case? If so, state which of them.

25. Have not they or some of them, or some one else, and who, stated to you, in whole or in part, what questions were put to them, or what testimony they had given or should give in their depositions?

26. Have you not seen, or read, or heard read, some or all these direct or cross interrogatories, before the same were put to you in their order by the commissioner? Has not the substance of them, or of some of them, been stated to you verbally or in writing? If so, by whom, and when?

89 27. Have you not seen, read, or heard some or all of the direct or cross-interrogatories prepared or filed to take the depositions of your brothers and sisters, or of some of them, in this case? Has not the substance of them, or of some of them, been stated to you? If so, by whom, and when?

28. Have you not seen, read, or heard read or stated, the depositions, or a part thereof, or the substance of the whole, or a part thereof, given by your brothers and sisters, in this case, or by some one or more of them, and which?

29. Whether your mother was an active and intelligent woman in 1830 and 1831, or how otherwise? When did she die and at what age?

30. If in answer to the 9th direct interrogatory you say her eye-

sight was not good, please state particularly when it was not, during what period? What was the trouble? How severe was it? Did it prevent her from reading, or from her usual avocations? Did she have a doctor, and who was he?

E. MERWIN,
Solicitor for Respondent E. B. Badger.

Circuit court United States.

MASSACHUSETTS DISTRICT, *ss.*, *May term*, 1861.

JAMES W. BADGER
vs.
DANIEL B. BADGER *et al.*

Interrogatories to Mary H. B. Sturgis.

1st. Please state your name, age, and place of residence.

2d. Whether or not you are related to the pl'ff in this case, and how?

3d. Whether or not you were related to the late Dan'l B. Badger, of the city of Boston, and how?

4th. Whether or not you resided in the city of Boston between the years 1820 and 1831, inclusive? If yea, with whom and in what place or places, and at what periods, respectively, in said places?

5th. Whether or not your mother kept boarders during that period, and whether or not she had any other, and what, means of subsistence, to your knowledge?

90 6th. Whether or not the said Daniel B., to your knowledge, ever rendered any and what assistance to your mother in the support of the family during that period, and whether or not he was of any and what ability to do so?

7th. Whether or not you ever applied to the said Daniel B. for money on behalf of your mother? If yea, under what circumstances and with what results? Whether or not you ever asked him to pay a note held by your mother against him? If yea, state whether or not he paid the same. State fully.

8th. Whether or not the said Daniel B. and the said Joseph Badger, or either of them, to your knowledge, reported to your mother from time to time, during the above period, their doings as administrators, or consulted with her in reference thereto? Whether the said Daniel B. was in the habit of visiting the house, or how otherwise?

9. Were you present at any time when the said Daniel B. requested your mother to sign any and what papers? If yea, please state when and where, and what was said between them. State the occasions as nearly as you can and what took place, and whether or not your mother ever read such paper or papers. Also, whether or not you ever heard him say anything about paying a debt due to William Jones if she would sign a certain paper. If yea, what did he say upon that subject. What debt was it? State fully.

10th. Whether or not you were present when the said Daniel B. requested your mother to sign any paper relating to the sale of real estate belonging to the estate of your father? If yea, when was it, according to the best of your recollection? What was said and done by him? What was said by your mother? Who else was present? What was said by each and all of you? And whether or not your mother heard such paper read or read the same; and whether or not she requested said Daniel B. to leave the same; and whether or not she signed the same: and whether or not her eyesight was good?

11. Whether or not you heard the said Daniel B. then and there request your sister Almira to sign said paper? If yea, what was said by each of them, and whether or not she signed the same?

12th. Whether or not you have ever heard the said Daniel B. say anything about his rights, as the eldest son, to your father's estate? If yea, when, how often, and on what occasions, and what did he say?

13. Whether or not you ever heard your mother say anything to the said Daniel B. upon the subject of his conduct as administrator? If yea, when, and what; whether or not anything was said by her about employing a lawyer? If yea, what?

14th. Whether or not you know of your own knowledge, or from conversations between the said Daniel B. and other persons, in your hearing, or from anything the said Daniel B. has said to you upon the subject, anything about the attempt to sell the estate in North Federal Court, in the month of February, 1831, and also the alleged sale of the same again in the month of March, 1831. If yea, please
91 state fully all you know upon the subject and what you heard the said Daniel B. say about it. Whether or not the house was occupied at the time, and in whose possession was the key?

15th. Whether or not, in consequence of information which your mother received about the sale of the estate in North Federal Court, in the month of March, 1831, she said anything to said Daniel B.? If yea, what did she say to him? Whether or not she told him what she had heard, and whether or not she told him anything she had been informed of by a relative living in North Federal Court, about said alleged second sale? If yea, what was it, and what reply did he make?

16th. Whether or not you ever heard any conversation between the said Daniel B. and your mother in relation to the assignment of dower? If yea, when and what was said by each of them?

17th. Whether or not you at any time, and when, heard any conversation between your mother and Samuel D. Parker, esq., of Boston, counsellor-at-law, in relation to the conduct of said Daniel B., as administrator? If yea, state the circumstance under which said conversation took place, and what was said by said Parker.

18th. Whether or not you know who managed the real estate and collected the rents belonging to the estate of your father after his death? If yea, who, and whether or not your mother received any and what amount of the same?

19th. Whether or not you are familiar with your mother's handwriting, and know her signature? If yea, whether or not you have

seen the petition signed by Joseph Badger and Daniel B. Badger, administrators, to the supreme judicial court of Massachusetts, for the county of Suffolk, at the March term, 1831, for leave to sell the real estate of your deceased father, a copy of which is annexed hereto? If yea, when did you see the same, and whether or not the writing upon said petition, purporting to be the consent of your mother, "Ann Badger," to the granting thereof, was signed by her? And whether or not the signature "Ann Badger" is in the handwriting of your mother?

20th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. W. BADGER,
By JAS. B. ROBB, *Att'y.*

92 Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

JAMES W. BADGER
vs.
E. B BADGER *et al.*

E. B. Badger, one of said respondents, objects to all of the interrogatories filed by the complainant to Mrs. Mary H. B. Sturgis, from the 5th to the 19th, inclusive, as leading, irrelevant, and incompetent, and also to the 19th, because the original paper inquired of is not annexed, nor the copy referred to, and files the following cross-interrogatories *de bene esse:*

1. Please state your precise age.

5. Were not you or your husband of the parties complainants to the former suit brought against your brother, Daniel B. Badger, *et al.*, in this court?

3. Are not you or your husband interested in the present suit? If anything is recovered in this suit, do not you or he expect to receive your proportion? If you say that neither of you so expect, state why not.

4. If you say that you or your husband have assigned or sold your or his interest, answer upon your oath, was not such assignment or sale requested or made in order that you might be a witness in this suit? Was it not agreed, or do you not understand or expect, that you or your husband are to receive your share, or some share, of whatever may be recovered, notwith-tanding said assignment?

5. How came you or your husband to make a deed or assignment of the interest of either of you? Who requested you or him to do it? Was anything paid to you or him therefor? If so, what, and by whom? And if anything was paid either of you, did either of you give a receipt or any writing therefor, and to whom? And if so, annex a true copy of the same. Did not your husband or you

agree to pay back whatever was paid or given either of you in case the plaintiff does not recover in this suit? Or if not, what was the agreement or understanding upon that point?

6. What became of the first suit against your brother, Daniel B. Badger, *et al.*, in this court?

7. Did you or your husband agree that the said former suit should be dismissed? If so, when was such agreement made? When did you and when did he first know that it was dismissed? Who asked him or you to agree to dismiss it, and why did either of you agree to dismiss it, if you did agree?

93 8. Did either you or your husband pay the costs, or any part thereof, of the former suit? Who employed and paid the plaintiff's counsel in the former suit, and who employ and pay him in this suit? Upon what terms was said first suit carried on, and is the present suit carried on? State all who are to share in whatever may be recovered in this suit.

9. Did not you or your husband furnish, or have neither of you agreed to furnish, or to bear some portion of the expense of carrying on this suit? Is there an agreement or understanding, expressed or implied, between you or your husband and the plaintiff, or between you and your husband and some other person or persons, and who, that you or he will pay, bear, or be responsible for some proportion of the expenses of carrying on this suit? State fully such agreement or understanding.

10. If the plaintiff recovers in this suit, will it not be to the pecuniary advantage of you or your husband? And if he does not, will it not be to your or your husband's pecuniary loss? Answer particularly as to each.

11. If you have answered the preceding question negatively, then state why it will not be to your advantage or loss as inquired of.

12. If you answer to the 5th direct interrogatory that your mother kept boarders between the years 1820 and 1831, state particularly in what year or years she kept boarders, in what street or house; and give the names of such boarders, and state how you happen to have this information. Do you testify from your personal knowledge and recollection?

13. If in answer to direct interrogatories you say that your brother, Daniel B., did not render any assistance to your mother, state how you know that he did not. Do you swear on your personal knowledge that he did not, or do you only mean that you did not personally know anything about it?

14. Please state how you know that neither Daniel B. nor Joseph Badger from 1820 to 1831 reported to your mother their doings as administrator, as inquired in the 8th direct interrogatory. Were they during said period on friendly or unfriendly terms with your mother?

15. If you have answered that you were present at conversations as inquired of in the 9th, 10th, and 11th direct interrogatories, state the dates of each, giving month and year; also the place where, and who

was present. Do you undertake to swear to the language used in such conversation? That you have stated all that was said?

16. How do you know that your mother did not read, or hear read, the paper or papers inquired of in the 9th and 10th direct interrogatories before she signed them? Did you read or hear read said paper or papers?

17. If you did not then read or hear read said paper or papers, state how you can identify the same.

18. Have you seen said papers, or either of them, or copies
94 of them, or either of them, since, and of which, and when? Where did you see them, and who showed them to you, and how do you know that those you have since seen were the originals or true copies of the identical paper or papers which your mother signed without reading or hearing read?

19. Was not your mother a bright, active, intelligent woman in 1830 and 1831? When did she die, and at what age?

20. Have you not had furnished to you, and if so, by whom, a printed copy of the defendant Badger's answer in this case, or have you seen, read, or had in your possession such copy?

21 (*a.*) Have you not testified in whole or in part from some memorandum? If so, who furnished it to you? If you prepared it, state when, and at whose request, and how you happened to prepare the same. How did you know upon what points or subject you would be questioned in the interrogatories?

21 (*b.*) If in answer to the 19th direct interrogatory you say that the signature "Ann Badger" is not in your mother's handwriting, then state in whose handwriting said signature is, or by whom made.

22. Were you on friendly terms with your brother, Daniel B.? When did you cease to be on friendly terms with him? When did you last visit or speak to him?

23. Have either of your brothers or sisters given their depositions yet in this case? If so, state which of them.

24. Have not they, or some of them, or some one else, and who, stated to you in whole or in part what questions were put to them, or what testimony they had given, or should give, in their depositions?

25. Have you not seen, or read, or heard read, some or all of these direct or cross interrogatories before the same were put to you in their order by the commissioner? Has not the substance of them, or of some of them, been stated to you verbally or in writing? If so, by whom, and when?

26. Have you not seen, or read, or heard, some or all of the direct or cross interrogatories prepared or filed to take the depositions of your brothers and sisters, or of some of them, in this case? Has not the substance of them, or of some of them, been stated to you? If so, by whom, and when?

27. Have you not seen, read, or heard read, or stated, the depositions, or a part thereof, or the substance of the whole, or of a part thereof, given by your brothers and sisters in this case, or by some one or more of them, and which?

28. If in answer to the 10th direct interrogatory you say your

mother's eyesight was poor, please state particularly when it was, during what period. What was the trouble? How severe was it? Did it prevent her from reading, or from her usual avocations? Did she have medical advice, and who was the doctor?

E. MERWIN,
Solicitor for Respondent E. B. Badger.

95 *Depositions of witnesses produced, sworn, and examined the 15th, 16th, 17th, 19th, 20th, and 22d days of July, 1861, at the city of New York, under and by virtue of a commission issued out of the circuit court of the United States within and for the Massachusetts district, in a certain cause therein depending and at issue between James W. Badger, plaintiff, and Daniel B. Badger and others, defendants.*

Almira A. Badger, being duly sworn pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

To the 1st interrogatory she saith: Almira A. Badger; age 53 years last April, and reside at 177 Henry street, Brooklyn.

To the 2d int. she saith: I am a sister to him.

To the 3d int. she saith: I was a sister of his.

To the 4th int. she saith: I resided in the city of Brooklyn between the years 1820 and 1831, inclusive. I resided with my mother in Broad street, Prince street, Sheafe street, Fleet street, Lafayette avenue, Hanover street, and Myrtle streets. In all the above-named streets I lived from two to two and a half years, with the exception of Myrtle street, where we resided fifteen years. I cannot give the exact dates.

To the 5th int. she saith: My brother Daniel boarded at home, as well as my brothers David and Jacob. Augustus Henry remained at home until he went as an apprentice at about 14 years of age. He then resided with his employer. Alfred remained at home until he went as an apprentice, which was about the age of 14. And Ann, myself, Eliza, Mary, and James resided with my mother, Mrs. Ann Badger. My brother, David J. Badger, was afflicted—his nerves were disordered, and finally ended in derangement, and became permanently deranged while we lived in Lafayette avenue. I do not recollect the exact year.

To the 6th int. she saith: My mother always kept boarders when we resided in Prince, Fleet, and Sheafe streets. Her daughters employed themselves in needlework and school-teaching.

To the 7th int. she saith: He never rendered any assistance. On the contrary, he never paid my mother what was due her. In about a year after my father's death, my brother Daniel borrowed from my mother $60 and gave his note, and never paid anything on it, and when it was outlawed he defied her to get it. He was not able to render any assistance. When my father died he was a clerk,

96 and at that time took his store and goods on trust. His business was unprofitable, which he himself acknowledged. When

my mother sent me for rent, he would say, "I have done no business for a week past, and I have no money to give her;" and I would answer, "I do not want your money; mother sent me for money from the estate for rents." And in turn he would say, "Mother wished me to retain the rents to pay off the debts and I have nothing for her." By brother Daniel had a sick wife and an expensive family to support.

To the 8th int. she saith: I was present. My mother was expected to administer, but my brother Daniel dissuaded her from it. He told her the care of her family was sufficient for her to attend to, besides she would have to employ a lawyer, and that would be an expense to the estate, whereas if he (Daniel) administered, he could conduct the affairs without any charge to the estate, which was the understanding. My mother objected on account of his youth and inexperience; he was but just 21 years of age; but on condition of his agreeing to associate one of his uncles with him in the management of it, she consented, and he was appointed administrator with his uncle, Joseph Badger.

To the 9th int. she saith: They never reported anything, as administrators, to my knowledge, nor consulted with her in reference thereto. She has repeatedly asked them to bring in their accounts, and she would appoint a man, and they could appoint a man, and have them examined, as both she and the children were dissatisfied. He rarely came to the house except on business.

To the 10th int. she saith: I was present when he presented three papers for my mother to sign. One paper certified that he had conducted the affairs of the estate to her and her children's satisfaction. That was the purport of it, but it went more into detail. Another paper was to give him a quitclaim, and another was to acknowledge that the estate was in debt, and to empower him to sell so much of the estate as would cancel such debts. This interview took place while we resided in Hanover street. I can't give the exact time. My mother remarked, "Is it possible, Daniel, that you can present this paper, (referring to the first mentioned by me,) when you know my opinion is so different?" He answered that her signature to it would not do her any harm, but would be of great consequence to him in settling the estate. My mother did not read the papers nor sign them. She was not accustomed to reading writing, as her eyesight was poor. He told her what was in them.

To the 11th int. she said: I was present in Hanover street when he presented a paper of that import. It was on Monday morning, just after breakfast, in the spring of the year. He came with a young man to our house. He said, "Mother, I wish you would sign this paper," (repeating its contents to her.) She answered, "Daniel, why do you come in the morning with this paper, when I am so busy? Leave it and I will attend to it, and if it is proper, I will sign
97 it." He grew very angry, and said he could not leave it that he must enter it at nine o'clock that morning. She refused to sign it, and to my knowledge did not sign it. Myself, my sisters Eliza and Mary, and two of my brothers, I think, Jacob and Alfred,

were present. My mother did not read the paper nor sign it. He told her what was in it. Her eyesight was poor.

To the 12th int. she saith: He did request me to sign the paper at this time, and I positively refused, and did not sign it at that time.

To the 13th int. she saith: He came in the afternoon of the same day, as I remember, and said, I suppose you will have no further objection to sign this paper, as they have all signed but yourself, and I thought there was no use of my holding out alone, and I signed the paper, but I signed it ignorantly, as he never told me that he had bought off my sister Richardson, and brother Jacob.

To the 14th int. she saith: He (Daniel) many times remarked, that as the eldest son, he had a right to my father's estate, and would have it, and we might help ourselves. It was about the time of the selling of the real estate, when he made those remarks.

To the 15th int. she saith: She often expressed herself to him of her dissatisfaction with him, in not rendering his accounts, and said she would like to employ a lawyer, and have things investigated, and he would refer to his own lawyer. She would have employed a lawyer, but her means were limited and she could not afford it.

To the 16th int. she saith: Daniel said to my mother, in my presence, that the estate in North Federal Court was to be sold. Mother was advised to buy it in, that she might have the entire control of that house. She employed Adon Hall, as her agent, and he bid it in for $400. On the same day one-fifteenth of the house belonging to the estate in Broad street was sold. While mother was endeavoring to raise the $400, Daniel was constantly annoying her; he said the creditors were anxious to receive their pay, and he did not know what injury they might do to him. In less than a month from the sale of this estate, one of the residents of Federal Court came and told mother that three men came down in the court, (Daniel Badger was one of them,) and got in the window of the house, and put out an auctioneer's flag, remained there about ten minutes, took down the flag, and went away. The house was not occupied at that time, and mother had the key. Mother sent immediately for my brother Daniel, upon hearing that he had put out a flag again, and said: "Is it possible, Daniel, that you have sold the estate in Federal Court again?" He answered that he had, that there was no use in waiting for her, she never would raise the money, and he wanted it.

To the 17th int. she saith: I have answered this interrogatory in the preceding answer.

To the 18th int. she saith: I did. It was in the spring of the last year we resided in Fleet street. He told my mother that her dower
was to be set off, and she had better choose the Federal Court
98 and Broad street estates. She objected to it, and thought that
she had rather have "the Distiller square estate." She said: "Daniel it was your obstinacy which deprived me of the Lynde street house as a residence. Your father had it prepared for that purpose, before he died, and I would like to have my choice now." After that, Robert Badger came to the house and told my mother that she

had better take the Federal Court and Broad street estates, and she acquiesced.

To the 19th int. she saith: When we resided in Myrtle street, Mr. Parker was negotiating with the city for the Blackstone street house. My mother took that occasion to state to him her dissatisfaction of Daniel's managing of the estate, and asked him if he did not think something might be done about it. He said: "I think Daniel pretty cunning, yet I do not think him very secure." He seemed desirous to waive the subject, and not to talk about it, but mother continued to talk to him. He said if the estate had been settled as it should have been, the heirs would have received from ten to fifteen hundred dollars apiece. He said that the estate had never been transferred to Daniel; on the record it stood in the original name.

To the 20th int. she saith: Daniel collected the rents and managed the estate after my father's death. For some years my mother did not receive any of the monies from the estate, as she was anxious to have the income to pay the debts; and has told me, that for some years she had not drawn over from three to five hundred dollars a year.

To the 21st int. she saith: I will here state with reference to the $60 note mentioned by me in my answer to the 7th interrogatory, that about five weeks before my mother died, my mother sent for Daniel, and told him that she wished he would pay that note, as she was near her end, and use for the money. He took no notice of that, or her sickness, and never answered the letter. She also sent to him at another time after that, for money, on account of rent of store of hers in Broad street, which he occupied, and requested him, as a favor, to send her some, on account of that quarter not yet fully due. This letter was enclosed in an envelope directed to his son Erastus, which he gave to his father, but he never answered it. The paper certifying that he had done justice, &c., he presented to my mother, many times, for her signature, and once in his store, in my presence, offered her $200 if she would sign it, and she refused. He afterwards sent Erastus, his son, to our house on Myrtle street, on a Sabbath afternoon, with a note, urging mother to sign a paper, and offering her again $200, and she positively refused to sign it.

In answer to cross-interrogatories propounded:

To the 1st cross she saith: I am 53 years old the 9th of last April.

To the 2d cross she saith: I was.

To the 3d cross she saith: I am not interested in the present suit. I do not expect any proportion, if anything is recovered, because I have sold out my interest.

99 To the 4th cross she saith: My brother James proposed to buy us out, and I sold to him. There was nothing said about my being a witness, and I have no such expectation of receiving any share that may be recovered.

To the 5th cross she saith: I sold out my interest because I wanted the money. My brother James proposed to buy me out, and I sold

to him. I received an equivalent for my interest from him. I did not give a receipt, or any writing. I did not agree to pay back what was paid me in case plaintiff did not recover. There was no agreement or understanding about it.

To the second 5th cross-int. she saith: I cannot tell.

To the 6th cross-int. she saith: I answer this interrogatory by saying that I have no knowledge on the subject of this interrogatory.

To the 7th cross-int. she saith: I did not pay any part of the costs of the former suit. My brother James employs and pays them in this suit. I don't know who paid them in the former suit. I do not know upon what terms the first suit was carried on, and know nothing about the second except that I am a witness for my brother James. My brother James, as I understand it, has the whole share.

To the 8th cross-int. she saith: In Prince street, Fleet street, and Sheaf street. Mrs. Barker and son boarded with us a great while. My brother Jacob and David boarded with us in Prince street, and sometimes transient boarders that stayed a shorter time, whose names I do not recollect. And in Fleet and Sheaf streets, besides my brothers and two other young gentlemen, Mr. Blaisdell and his wife. It is so long since, I do not remember the names of all. My brother David paid a large board, which more than paid the rent of the house. He was always generous to the family.

To the 9th cross-int. she saith: My mother has told me what she has received from him from the rents of the estate, and what she has not received from him as well. When she did not draw from the estate she would always speak of it with great satisfaction, as she was always desirous to save the income to pay the debts. As to present assistance, he never rendered any to the family, as they had no need of it, and he had no ability to do it. All mother ever asked from him was her dues from the estate.

To the 10th cross-int. she saith: I never heard her say, and he never did pay her any sums of money for the support of the family. I know that it was hard work for her to get her own money from the estate through him. He said at the time that he was doing very little business, and kept the key of the store door turned half of the time, and he was away. He never pretended to do much business.

To the 11th cross-int. she saith: It was soon after my father's death, while we resided in Broad street. My brother Jacob, I think, was present, and one or two others: and many other times I heard him talking on the same subject with her. I state that I give the substance; I can't say that they are the exact words.

100 To the 12th cross-int. she saith: I know from my personal knowledge that they never rendered any account, and from what my mother has told me; I know she always transacted her business before her children. There was always a feeling of dissatisfaction among the members of the family as to Daniel B. and Joseph Badger. We were always suspicious of them.

To the 13th cross-int. she saith: It is important for me to say that they were so contrary to my mother's opinion, and she so positively refused to sign them, and he urged them upon her so much and

showed so much anxiety to have them signed, is the reason that I remember them. I cannot state what papers they were any farther than I have already stated in my direct testimony. I have not seen said papers, or copies of them, since, nor any others referred to in this interrogatory.

To the 14th cross-int. she saith: No; I haven't had anything to do with it; haven't seen or read it, but know there is such a copy from hearing.

To the 15th cross-int. she saith: No; it has not been read by me, or to me, nor been stated to me. I frame my [answer] from my personal knowledge.

To the 16th cross-int. she saith: My brother's attorney, Mr. Robb, told me to write down what I knew upon the subject, and he talked with me upon the subject. I prepared it at his request. I can't tell exactly the month or day, but since my brother undertook the suit.

To the 17th cross-int. she saith: I have not had any knowledge of the interrogatory propounded before receiving them from the commissioner. But Mr. Robb has interrogated me in a similar way on these subjects, and his conversation with me brought my mind to bear on particular points in the case.

To the 18th cross-int. she saith: I have never had anything to do with these depositions, but we have conversed together upon matters concerning the estate. I have not seen or heard the interrogatories or cross-interrogatories of any witnesses in this suit, whatever, nor the substance of any of them.

To the 19th cross-int. she saith: None of them to my knowledge.

To the 20th cross-int. she saith: They have not.

To the 21st cross-int. she saith: My mother kept a memorandum book of whatever was paid into her; and when the account was drawn to a close, she could easily tell whether she had drawn from the estate or not.

To the 22d cross-int. she saith: I keep house at 177 Henry street, Brooklyn. My brothers Jacob and James live with me.

To the 23d cross-int. she saith: I can't say the last time I visited his house, but it was a long while ago. When we met we always conversed together as acquaintances would, but on the subject of the estate we were always at variance.

To the 25th cross-int. she saith: I have seen it a great many
101 times, but I could not swear to my mother's signature, but think I could tell it if I saw it.

To the 26th cross-int. she saith: I have not.

To the 27th int. she saith: My mother was an active and intelligent woman in her domestic life, but not outside of that.

To the 28th cross-int. she saith: When we resided in Fleet street she was under Doctor Ingalls' care, on account of her eye, which was much inflamed, and another time under Doctor Ware's medical care, and at another time under Doctor Dick's, oculist, of Boston. She could not use her eye much, although it had a very well appearance sometimes. It extended through about ten years, I should think.

It prevented her from using it on particular occasions, but not as a general thing in her domestic work.

ALMIRA A. BADGER.

Taken, subscribed, and sworn to before me, this 15th July, 1861.

R. E. STILLWELL,
U. S. Com'r.

Augustus H. Badger, being duly sworn, the 17th July, 1861, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

To the first interrogatory he saith: Augustus H. Badger; 50 years of age. Reside in Brooklyn, eastern district, and am a ship chandler and grocer in South street, New York.

To the second int. he saith: I am his brother.

To the 3d int. he saith: He was my brother.

To the 4th int. he saith: I lived in Boston up to the spring of 1830. My father died in 1819, and I lived with my mother from 4 to 5 years afterwards, in Prince and Fleet streets. After that I went with a Mr. Johnson in his store in Hanover street, and lived with him two or three years. From there I went to a Mr. Bates, on the Central wharf at Boston, and lived with him, I think, two or three years.

To the 5th int. he saith: She kept boarders. That she was obliged to do so to live—during the time I lived in Boston, from 1820 to 1830. My brother David was in the wholesale dry goods importing business on his own account, a part of the time spoken of in this answer. After my father died, David, who boarded with my mother, paid the rent of the house, and contributed in various other ways to the support of the family, and my wages, after I went into a store, were turned in to her, in payment for my board and expenses while I lived with her.

102 To the 6th int. he saith: My brother Daniel took the store and stock in trade that was formerly occupied and owned by my father. He was just 21 years of age when my father died, and he had no money and took the stock on credit. That branch of my father's business he had paid but little attention to before his death, and it had nearly run out. Soon after my father's death Daniel married, and his business was so small that it would hardly support his family. That is what he told me. I know that David lent him money, and I don't know or ever heard of his contributing anything to the support of mother's family.

To the 7th int. he saith: Daniel collected the rents. Mother sent me up to him when she considered that he had money in his hands that he had collected belonging to her. He was always hard up. Sometimes he would say that he had not the money, sometimes he would give me two or three dollars, and at other times he would send me to some tenant to collect rents if I could—some person who was behindhand in his rents.

To the 8th int. he saith: I think about a year or two after my father's death there was some reckoning in relation to matters concern-

ing my father's estate, between two of my brothers—Daniel and David. After that it was impossible to obtain any information satisfactory to the family, from Daniel. Joseph seemed to have nothing to do with matters. Everything appeared to be left with Daniel. Daniel came to the house very seldom. I have no knowledge of Daniel and Joseph consulting with my mother, or reporting their doings as administrators.

To the 9th int. he saith : I have been in the house when he has brought papers there for my mother to sign. What they were I don't know. This was when she lived in Hanover street, about the year 1829, about the time we were making an effort to substitute Jacob in his place, to get the property out of his hands. He wanted her to sign the papers, but she declined, and she stated to us she would not sign any more papers without the knowledge of the older children. Whether he persuaded her to do so or not, afterwards, I can't say. My mother did not read any papers that he presented her to my knowledge. I never heard him say anything about paying a debt to Wm. Jones, if she would sign a paper, but I do know that when my brother James was sick, I think in Prince street, mother required money, which she wanted Daniel to loan her, for medicines, &c. That he wouldn't do on any other terms than that she should sign certain papers, which she declined doing, and she went to Robert Badger and got the money from him.

To the 10th int. he saith : About the time we were trying to substitute Jacob in the place of Daniel, as administrator, Daniel told me in talking about the matter that he would fix things in such a way that none of us would get a cent without he chose to give it to us. This was while we lived in Hanover street, and a short time before I left Boston. I recollect very well of the family saying that he
103 claimed the best right to the property, as he was the eldest son, and had helped to save it, as he had been clerk for my father.

To the 11th int. he saith : I have heard mother talk to him in relation to matters concerning the estate; that he would not expose them to the family ; that some of the children were getting old enough to want to know and understand about the estate, and how it stood. And I have heard her speak of employing some one to overhaul matters : and I believe she did so in a measure. This was when we lived in Hanover street.

To the 12th int. he said : I have an indistinct recollection of a conversation between them about dower, but can't state what it was.

To the 13th int. he said : I did about the year 1829. About that time the older heirs and mother made up their minds to appoint another person as administrator, as they could get no satisfaction from Daniel B. as to what had become of the rents he had received, and as to the management of the estate generally. This move on the part of my mother and older members of the family led Daniel, in conversation with me a short time before I left Boston, to say that he should fix things in such a way that none of the family would get anything

without his consent, or he chose to give it to us. This was the substance of it. I can't say they are the exact words.

To the 14th int. he saith : Daniel B. collected the rents. We had nothing to do with any other person in the matter. Joseph Badger, the co-administrator, never done any business with us in reference to the estate, to my knowledge. When I would go after money for mother, being on account of her portion of rents, to Daniel, sometimes he would give me two or three dollars, and sometimes nothing. I was at home until I was fourteen years of age, and four years after the death of father. I run of errands for mother. I think I was the only one that went after rents during that time, and I think I did not receive from him $200 a year.

To the 12th int. he saith: Nothing that I think of at present.

In answer to cross-interrogatories propounded, he saith :

To the 1st cross he saith: I was born in November, 1810.

To the 2d cross he saith: I was.

To the 3d cross he saith: I am not, and if anything is recovered do not expect to receive any proportion, because I have sold out my interest.

To the 4th cross he saith: I was not so requested. My brother made an offer for our interest in the estate, and I accepted his proposition, and do not expect to receive anything if anything is recovered.

To the 5th cross he saith: I made a deed for my interest because the offer was satisfactory to me. I sold to my brother James, and I received from him about $150. I did not agree to pay back anything, and there was no such understanding, and there was no agreement or understanding about it.

104 To the 6th cross he saith: I carried on the first suit for myself and others interested, leaving the whole management of the thing to my attorney. I believe he withdrew the suit from court without prejudice to the rights of the parties interested, and by consent of the defendant's attorney.

To the 7th cross-int. he saith: I left everything to my attorney, and, acting under his advice, sanctioned his proceedings. I knew that it was dismissed soon after it was. I can't tell the date.

To the 8th cross-int. he saith: In the first suit I employed the counsel and paid him, and the costs. I don't know anything about this suit, but suppose the plaintiff. I commenced the first suit on my own account, for the benefit of myself, and others interested.

To the 9th cross-int. he saith: I have nothing at all to do with this suit, directly nor indirectly, other than as a witness.

To the 10th cross-int. he saith: I have already answered that I have no interest, direct nor indirect.

To the 11th cross he saith: Because I have no interest in it.

To the 12th cross he saith: He was a clerk in my employ, and ceased to be in the spring of 1852 or 1853.

To the 13th cross he saith: My brother Jacob, David, and Mr. Blaisdall and his wife, my uncle Barber and his son boarded with my mother, and there may have been others, but I don't recollect. She

kept boarders in Prince and Sheaf streets, and other places where she lived. She had boarders in the house up to the time I left Boston.

To the 14th cross he saith: I swear on what I have already stated. Up to the time I was 14 years of age, I done the errands for the family, and she could not get from him what belonged to her in his hands. Daniel's business was very small, and he had a family of his own, and he told me that his business wouldn't support him, and that he owed David for money he borrowed.

To the 15th cross he saith: Mother's dower was set off, I think, in 1828 or 1829. A part of the dower was a building occupied by Daniel in Broad Street. The rent of that building I suppose he paid to mother, except a balance due from him to her for back rent at her death, which he refused to pay, and has not paid to the administrator. That is the only way that he has paid rent to mother to my knowledge, except what she received on account, as I have stated before. I never heard mother say anything of the kind, and it was not expected of him in his position to pay money to assist in the support of the family. Daniel B. was doing a small and very limited business during said period.

To the 16th cross-int he said: It was about the fall of the year 1829. I heard no conversation other than that she asked him to leave the papers for her to examine, and he would not do it. It was in Hanover street. I was there. Daniel and my mother were there. What other members were there I can't say positively. I don't know that I have stated all that was said, but have stated the substance of what I remember.

105 To the 17th cross he saith: I know that Joseph never reported anything direct to her, and Daniel never did, but had a reckoning with David once, as I stated before. After that, I know by conversation that mother and the rest of us had with him, that he had not and would not render any account and show what became of the rents of the estate. Uncle Joseph Badger, I could not say whether they were on friendly terms or not. Daniel B. and the rest of us sometimes talked pretty plain, but can't say that we ever quarrelled.

To the 18th cross he saith: I didn't read the papers, neither did he leave them there to be read. I have not said what they contained, neither have I seen any papers purporting to be copies of them, to my knowledge.

To the 2d 18 cross-int, he saith: I never knew my mother to read a written document in my life. Some papers she may have signed upon Daniel's representation of the contents. Letters, &c., that came to the house for her she would get some member of the family to read. She could read writing, but not very conveniently, and she preferred to have others read to her. I did not read or hear read said papers.

To the 19th cross int. he saith: I answer no to the whole interrogatory.

To the 20th cross-int. he saith: No. I don't know anything about it.

To the 21st cross-int. he said: As to dates, I take it from my guardianship, which was in 1829, circumstances that occurred previous, and since that. I have no memorandum or guide other than what I have stated in this answer as to dates.

To the 2d 21st cross-int. he saith: I have seen it, and probably might know it if I should see it.

To the 22d cross-int. he saith: I havn't been in Boston but once or twice in 20 years, and I never met him in New York. I never had any conversation unfriendly with him.

To the 23d cross he saith: I don't know. I understood that one of my sisters had given her deposition in. I havn't seen her, however, since she done it. I heard it through my nephew.

To the 24th cross-int. he saith: Neither they or any other person have had any conversation with me as to what they had sworn to or intended to in this matter.

To the 25th cross-int. he saith: Not any of them, until put to me by the commissioners on this examination.

To the 26th cross-int. he saith: I answer the same as in the last question.

To the 27th cross-int. he saith: No.

A. H. BADGER.

Taken, subscribed, and sworn to before me this 17th July, 1861.
R. E. STILLWELL, *U. S. Com.*

106 Alfred C. Badger, being duly sworn this 20th July, 1861, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

To the 1st interrogatory he saith: Alfred C. Badger; age 49 years; reside at 110 Allen street, New York, and am a commission broker, No. 1 Orchard street.

To the 2d interrogatory he saith: I am. He is my brother.

To the 3d int. he saith: He was my brother.

To the 4th int. he saith: I did reside in Boston from 1820 to August, 1831. I lived from 1820 to 1826 or 1827 with my mother. I then went into a store with Stephen Hill. Boston, and remained with him about two years, during which time I boarded with my mother; and from there I went to Thomas Cordyce, in Milk street, Boston, and remained with him about a year, I think, during which time I boarded with my mother. During both these periods I turned my wages in for board to my mother. I then went to James Boyd's. in Boston, and lived with him until about the time I left for New York, in 1831.

To the 5th int. he saith: She did keep boarders during pretty much the whole of that period. She had no other means of subsistence than that. I once in a while went to Daniel Badger to ask him to let mother have a few dollars on her account of rent; sometimes he would let me have a couple of dollars, and sometimes he would turn me away without anything, saying that none was due.

To the 6th int. he saith: He never rendered her any personal as-

sistance within that period, to my knowledge, and was not doing business enough to render assistance to any one, I should think; and he had no other means than what he derived through his store, and done rather a small business in sailors' clothing. He always complained about business being dull.

To the 7th int. he saith: I have answered the forepart of this question in my answer to the 5th interrogatory. I have asked him several times when I went to his store whether he could not let me have some money due mother on a note she had of his, but he never paid me a cent, or any other person, to my knowledge.

To the 8th int. he saith: I have been present when Daniel wanted mother to sign papers. When we lived in Sheaf street, Fleet street, and in Hanover street, Boston, I know of his calling for that purpose, and he tried to pursuade her at different times to sign, but she never would. I recollect once hearing her say to him that she would not sign his papers. I never saw mother read any of the papers. She requested him to leave papers so that they could be examined, but he never did. He would always come in a hurry, and said the papers had to be in court, and he could not leave them. I recollect
107 something about some notes of uncle Wm. Jones Daniel took from mother, and never heard of his rendering any account or paying anything on them at all. I have no recollection of hearing him say anything about paying a debt due to Wm. Jones, other than when I would go to the store, he would say sometimes, "if mother would sign that paper, he would let her have some money on account."

To the 9th int. he saith: I have heard her say to Daniel that she didn't think he was doing right; and I heard her say that she thought she must have a lawyer to see whether things were going on straight or not, for she did not think they were, and used many times complain to him that he was not doing right by the estate.

To the 10th int. he saith: When I was with James Boyd there was a boy come round from the North Federal court and told me that there was some men going into the window of the house. I went around, and went across the bridge under the arch, into Federal court and saw some two or three men putting an auction flag out. I stayed a few minutes and then came out. This was in March, 1831. This is all the answer I can give to this interrogatory.

To the 11th int. he saith: I understood she had said something to him about it, but I did not hear it.

To the 12th int. he saith: Daniel did, I always thought, knowing that he was one of the administrators. All that she used to receive of the rents was, as I told you before, sometimes he would give me two dollars, and sometimes he wouldn't give me anything, telling me there was nothing due. I sometimes would go to his place two and three times a week without getting anything.

To the 13th int. he saith: I think of nothing at present.

In answer to cross-interrogatories propounded he saith:

To the 1st cross he saith: I was 47 years of age the 19th day of last August.

To the 2d cross he saith: I was.

To the 3d cross he saith: I am not. I do not expect anything, if anything is recovered. I have sold out.

To the 4th cross he saith: There was nothing said to me about being a witness, and I never sold out with that view. There was no agreement of any kind about it, and I have nothing to do with it.

To the 5th cross he saith: No one requested me to make a deed of my interest. I sold it to James W. Badger in June, 1858, for $180 and gave him a deed for it. I can't annex a copy of it. I did not agree to pay back anything. There was no agreement about it.

To the 6th cross he saith: It was discontinued, as I understood, from my brothers.

To the 7th cross he saith: I left the business all to A. H. Badger of the former suit, and what he done in the matter I agreed to. I knew it, perhaps, a week after it was discontinued.

108 To the 8th cross he saith: The former suit was left entirely to A. H. Badger by me; whatever he done or agreed to was sanctioned by me. I presume that he paid the costs. A. H. Badger employed the counsel as I always understood I know nothing about who employs him in this suit. The former suit was carried on for the heirs. I never heard any terms stated.

To the 9th cross he saith: I state no, to the whole of the question.

To the 10th cross he saith: It will not be to my pecuniary advantage or loss.

To the 11th cross he saith: Because I have sold out my interest.

To the 12th cross he saith: She kept boarders all the time with very little intervals, and in all the places she lived, I think. I can name Capt. Barker, Mr. and Mrs. Blaisdell, David J. Badger. I cannot remember the names of others. I testify from my own knowledge as to these.

To the 13th cross he saith: I never knew of his helping her, and never heard of such a thing, out of his own private means.

To the 2d 13th cross he saith: I could tell her signature if I should see it, I think. I have seen her signature.

To the 14th cross he saith: I do not know that Daniel paid mother rent up to her death. I do not know, neither have I ever heard my mother say, that Daniel paid her any money for the support of her family. I know he carried on business while I lived in Boston; what he has done since, I don't know.

To the 15th cross-int. he saith: It was at various times. I can't recollect the dates. I recollect his coming when we lived in Sheaf street, and in Hanover street, and both times I recollect her telling him up and down that she would not sign any papers for him. It strikes me that Almira was in the room, in Hanover street, when she said that. I can't remember, particularly, what others. I can't state all that was said, but remember she said what I have stated.

To the 16th cross he saith: She did not sign any papers for him. I never saw her read any of the papers. I heard Daniel read part of one once. I never read any of them.

To the 17th cross he saith: I have not identified any papers.

To the 18th cross he saith: I have not seen any.

To the 2d 18th cross he saith: I have answered this question before in my 13th cross answer.

To the 19th cross he saith: No, to all the question.

To the 20th cross he saith: No, to all the question.

To the 21st cross he saith: I have no other memorandum than my head; if I had, I suppose I could tell more definitely. I did not know what interrogatories would be put, but Mr. Robb, our former counsel, has conversed with me, and got what knowledge I had upon the subject.

To the 22d cross he saith: I was always on friendly terms with him, although I have often told him he was doing wrong, and I thought he was cheating the minor children out of what be-
109 longed to them. The last time I saw him I was at his house to dinner, and that was a day or two after my mother's burial.

To the 23d cross he saith: I don't know.

To the 24th cross he saith: No, to the whole question.

To the 25th cross he saith: No, to all the question.

To the 26th cross he saith: I have given all the information I have upon the subject to Mr. Robb, that is all.

To the 27th cross he saith: I have not.

ALFRED C. BADGER.

Taken, subscribed, and sworn to, before me this 20th July, 1861.

R. E. STILLWELL,
U. S. Com'r.

Jacob Badger being duly and publicly sworn this 16th day of July, 1861, pursuant to the directions hereto annexed, and examined on the part of the plaintiff doth depose and say as follows:

To the first interrogatory he saith: Jacob Badger; 57 years of age; reside at 177 Henry street, Brooklyn, and am a shipping merchant.

To the second int. he saith: He is my brother.

To the third int. he saith: He was my brother.

To the fourth int. he saith: I resided with my mother in Boston from the beginning of 1820, and two years thereafter in Prince street, one year in Fleet street, four years and-a-half in Sheafe street, one year and-a-half in Lafayette avenue, one year in Hanover street, and the balance in Myrtle street, all between the years 1820 and 1831.

To the fifth int. he saith: She did keep boarders during that time. My brother David J., then nearly twenty-one years old, was a good salesman in a large business. He resided with her, and made money rapidly from the first. He was abundantly able, and assisted her by paying her rent and her bills when necessary, and presented her with any dry goods which she might require in her family. I was myself always employed, and in my minority received pay, with Cabot & Clark, and M. M. Hurst, sufficient for my support, and after that a salary which enabled me to help my mother.

To the sixth int. he saith: Daniel B. never rendered any assistance

to my mother. He never was able to. He was a clerk to my father when he died, under a small salary, and possessed of no property. On my father's death he took the stock of his shop on credit in commencing business. A sailor's retail clothing business. He did a small business, which did not increase thereafter. Scarcely sufficient to support his family, as he immediately married and had a family. I had good facilities of knowing his means. I attended my father's shop, and was intimate at my brother's shop. He purchased at stores where I was clerk. He did not pay his bills when they became due, because, as he told me, he was doing a bad business. D. J. Badger lent him money often to assist him in paying his bills, which he never paid him.

To the seventh int. he saith: I was present at the conversation when the appointment of administrators was spoken of. My mother expected and calculated, according to her conversation, to administer, but Daniel B. suggested whether, as it required going to court, consulting lawyers, making out accounts and such like, it would not be better for him to administer. She being fearful, and ignorant of law and accounts, was persuaded into this arrangement by him. He to act with my uncle, Joseph Badger, as co-administrator. She did not request Daniel B. to act as administrator. He told her he should not make any charge for his services in acting in that capacity.

To the eighth int. he saith: I was present when he presented papers for her to sign, the latter part of the winter or spring of 1830. She told him to leave the papers, as she would like to examine them, but he declined doing so, and she declined signing them. This was at our dwelling-house in Hanover street. She did not read them.

To the ninth int. he saith: Daniel B. brought in a paper about the time specified in my last answer, which was a petition to the court to sell real estate, as he said, to pay off the debts of the estate of my father, which he wanted her to sign. He came in the morning while she was attending to some of her family matters, and she requested him to leave it for her perusal, but he urged her signing it at once without reading it. It was urgent, he said, to carry it into court that morning. She told him he always brought his papers when she was about her family matters in the early part of the morning. She said, however, that she would not sign any petition giving him power to sell the real estate, as she was opposed to doing so. She afterwards said that she should not sign the petition giving him that power. There were several members of the family present, and I think he brought a man with him. We all of us opposed her signing the petition. The paper was not read, neither did she read it herself, nor sign it, as her eye-sight was not good, and she had a delicacy about wearing glasses.

To the tenth interrogatory he saith: He did request me to sign it, and importuned me to sign it, and I declined signing it at that time.

To the eleventh interrogatory he saith: I afterwards resisted many importunities of his to sign the petition giving him power to sell, and learning that he was going to present it to court on a certain day, I appeared with my counsellor, Curtis, to remonstrate against the court granting the power. He then proposed to buy my right in the

North Federal court and Broad street property, provided I
111 would sign, and not use my influence to prevent any others signing. My counsellor, Curtis, advised me to sell, and as I was then out of business and about leaving Boston, and wanted money to leave with, I accepted and sold on those conditions. and signed the petition, and I did not mention to the family, as I agreed not to, my reasons for signing the petition.

To the 12th int. he saith: I have frequently heard him say that as the eldest son he had a right to all my father's estate, and he meant to have it. On various occasions I have heard him say so, particularly when we attempted to thwart him in any measure in relation to the estate.

To the 13th int. he saith: I was present at a conversation in relation to the assignment of dower between my mother and Daniel, which was at Sheaf street house in 1827. Daniel proposed to have the North Federal court and Broad street property set off as her dower. She expressed herself displeased at the proposal, and said that she had wished that some arrangement could have been made to give her a house to live in. She said she had requested him to reserve the Lynde street house for that purpose— to live in. He insisted upon his propositions, and finally succeeded in having that property set off for her dower which he proposed.

To the 14th int. he saith: I know about the sale of the Distil-House square estate in the year 1830. On the day of the sale, 20th July, I was passing around the corner of Exchange and State street. I heard Wilson, the town crier, crying the sale. Among his descriptions of the property he described it as being thirty minutes walk from State street. I told him that was a much greater distance than it really was. He told me Daniel B. Badger had given him that description, and he had to go by what he represented; and he continued crying the same as before. Property, at that time, in Boston was desirable and valuable very much according to its nearness to State street. This property is six or seven minutes ordinary walk from State street. I was near the property at the time it was published to be sold, at 11 a. m. There was a company of about 10 or 11 present in the street in front of the property. The auctioneer, Hersey, did not put the property up when the time arrived for the sale, 11 o'clock; and as the day was rainy, cold, and disagreeable, the company were restless, and kept calling on him to proceed with the sale. He said he was governed by the directions of Daniel B. Badger, who was present, and should sell when he told him to. I protested, as one of the heirs, and called upon him to go on with the sale He answered that he did not know me in the matter, and should be governed by Daniel B. Half an hour having expired, people began to demand if there was going to be any sale made. The auctioneer said he could not say, it would depend upon how the administrator, Daniel B. Badger, should determine. The company then began to
leave. I spoke to several who were leaving, and entreated
112 them to stop until the property was sold. They replied they could not stay in the rain on an uncertainty, besides it is said

it is told among the company that the property will be bought in for the heirs, and they are requested not to bid; and they then left, after stating this to me. After about an hour's delay, and when the company was reduced to five or six, the property was put up and sold, and bid in by ——— Hart. D. B. Badger had given indications that he intended to buy the property, and my mother and the heirs suggested that I should see how the sale was managed. It was sold far below its real value.

To the 15th int. he saith: About a week after the sale I was in Daniel B.'s shop, and he talked about the sale. He told me what I knew well before, that he had employed Hart to buy the "Distil Square" property for him, and showed me a deed which he had filled up for W. P. Hart. I said to him "but you don't intend to deliver that to an irresponsible man like Hart before you get another deed from him back to yourself." He answered, "No, I calculate to get another deed back from Hart to myself when I deliver this."

To the 16th int. he saith: I did know William P. Hart. He was a laboring blacksmith, recently come from New Hampshire, who made no pretensions to having property, and whom nobody supposed had any property. He was related to Daniel B.'s wife, and I believe boarded with Daniel B.

To the 17th int. he saith: I knew Daniel Gilpatrick. He was a journeyman blacksmith. He worked with W. P. Hart and for Hart. He resided or boarded with my brother, Daniel B. Hart, Gilpatrick, and Daniel B. were very intimate, and were together nearly every night at Daniel B.'s shop.

To the 18th int. he saith: Daniel B. Badger managed the real estate and collected all the rents of my father's estate after his death. At the commencement of the administration by my brother it was agreed that my mother should get along with receiving as little as possible of the rents from the estate, and as much as possible of the same should be reserved towards paying the outstanding debts of the estate. He drew very little of the rents; I cannot state the amount. My brother, Daniel B. Badger, informed me that he had made up an account of the rents which he had paid my mother, and said he had paid her $425 per year, but I do not think that he paid that amount to her. The Broad street property rented for from $460 to $500 per year; Lynde street $250 per year; one of the Cambridgeport houses rented for $150 per year; the other Cambridge house, $75; North Federal court house, $175; Distil square estate, $400.

To the 19th int. he saith: He did request me to sign other papers on several occasions, and I declined signing because I did not see any reason for doing so, and because he was urging upon me papers to sign, and the rest of the family awakened my suspicion that there was something wrong. In the early part of the year 1830 he
113 presented me with a quitclaim, for my signature, of all debts, dues, and demands, written in his own hand, and which I hereto annex to my deposition, and which is marked Ex. A. The signature to the same, written in lead pencil, was made by Daniel B. to indicate where I should sign. I also annex a power of attorney

to sell the estate of my father and to pay off the debts, and which contains an acknowledgment of the debts which he stated was owing by the estate; (said exhibit is marked Exhibit B.) This paper was intended for the other members of the family also to sign.

To the 20th int. he saith: He never took but little interest in the estate. I think never made any careful examination of any of the accounts, owing to a tendency of his to periodical derangement and great nervousness he was unfitted to go into the minutia of matters, although well calculated in some respects for matters in general, besides his business engrossed his attention other ways. The accounts were never presented to me for examination at all. I never did examine them, and they were never presented to me for my signature, except in a hurry, without leaving the papers with me or giving me any chance to examine them. My brother David J. became deranged in mind in September, 1828, permanently, which was previous to the closing up of my father's estate.

To the 21st int. he says: I do not know of anything at present.

In answer to cross-interrogatories he saith:

To the 1st cross he saith: 57 years of age the 5th of May last.

To the 2d cross he saith: I was.

To the 3d cross he saith: No; I am not. I have sold out my interest, and therefore have no right to expect anything.

To the 4th cross he saith: I was not requested to sell my interest that I might be a witness, to my knowledge. It was not agreed, neither do I expect to receive any share.

To the 5th cross he saith: I made a deed, because I sold it to Jas. W. Badger, who called for a deed, and he paid me therefor $100. I gave nothing but the deed. I cannot annex a copy, because I have not it in my possession. I did not agree to pay back anything, and there was no agreement about it.

To the 6th cross he saith: It was withdrawn.

To the 7th cross he saith: I agreed to the withdrawal of the former suit some three years since, and I understood about that period that it was withdrawn. The suit was managed by my brother, A. H. Badger, and I did not trouble myself much about it, and I let him do as he pleased.

To the 8th cross he saith: As I was party in the former suit I presume that I am reliable for a portion of the expenses, if I have not already paid them. A. H. Badger employed and paid the plaintiff's counsel in the former suit. I do not know anything about who pays in this suit. In the former suit I was to receive whatever belonged to me. I don't know how the present suit is carried on.

114 To the 9th cross he saith: There is no agreement whatever about it, and I have not furnished or agreed to furnish, or bear any expense of this suit.

To the 10th cross he saith: It will not be to my advantage if he recovers, or to my loss if he loses.

To the 11th cross he says: The reason is, because I have sold my interest. I don't know who share in this suit.

To the 12th cross he saith: My mother kept boarders during the

against the estate of the said Daniel Badger, deceased, so much of our several and respective proportions of the proceeds of said sale of said estates as may be required for the full payment of our several and respective proportions of the debts due as aforesaid, from the estate of the said Daniel, deceased, which said debts are due and owing to the estate of the late Jona. Amory, esq., deceased, and to said Daniel B. Badger, on the fifteenth day of October, A. D. one thousand eight hundred and twenty-seven, amounted to the sum of four thousand six hundred and seventy dollars and thirty-three cents, and on which sum and interest is to be all owed and paid from that time. And the proportion of each of the undersigned being one-tenth part of said debt, with the interest due thereon. Hereby satisfying, allowing and confirming all and singular such matters and things as our said attorneys may lawfully do or cause to be done in the premises, and giving them power to substitute one or more attorneys under them in the premises.

Exhibit A.

Know all men by these presents that I, Jacob Badger, of Boston, in the county of Suffolk, gentleman, in consideration of fourteen dollars paid me by Ann Badger and Daniel B. Badger, of said Boston, widow and trader, all of said county, the receipt whereof is hereby acknowledged, do by these presents, for myself respectively and for my heirs and representatives, remise, release, and forever discharge the said Ann Badger and Daniel B. Badger, and each of them, of and for all and all manner of action and causes of action, debts, contracts, promises, claims and demands whatsoever, which against the said Ann and Daniel B,, or either of them, I now have or ever had by reason of any matter of dispute existing prior to this date, excepting my interest in a certain estate in Hanover street, with engine-house,
117 &c., thereon, and my interest and rents due from said estate.

In witness whereof I have hereunto set my hand and seal, this nineteenth day of June, in the year of our Lord one thousand eight hundred and thirty.

Executed and delivered in presence of

Mary H. B. Sturgis, being duly and publicly sworn, this 19th July, 1861, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows:

To the 1st int. she saith: Mary H. B. Sturgis; forty-five years of age; reside at Jamaica, South Long Island.

To the 2d int. she saith: He is my brother.

To the 3d int. she saith: He was my oldest brother.

To the 4th int. she saith: I resided there with my mother. When my father died, in 1819, I resided in Broad street; we then moved to Prince street, the same year, where we lived two years, and then moved to Fleet, where we lived one year, and then moved to Sheafe street, where we lived from 1823 to 1827, inclusive, and moved in October, I think, to Lafayette avenue. My brother Alfred moved

us in a wheelbarrow, and he assisted in carrying some large pieces of furniture; and moved from Lafayette avenue in May, 1829, to Hanover street, and from there to Myrtle street, in the middle of May, 1830, where we lived 15 years.

To the 5th int. she saith: Mother always kept boaders as far back as I can remember. My brother David was in a successful business, and paid a large board, and was very liberal and kind to the family, in making us presents of dry goods and paying bills. My brother Jacob boarded at home. Henry was away from home, living out as an apprentice. My sisters Ann and Almira took in sewing, and Eliza assisted them and also myself sometimes, and at times taught school. Ann was married in 1827. I know of no other means of subsistence than as I have stated.

To the 6th int. she saith: He never rendered any assistance. We always considered him a poor man, and he had a large family of his own. He was married on his birth-day, in June, 1820, and his wife was most always sick. I recollect once hearing mother say to him, "Daniel, I don't see how you get along with such an expensive family." His wife died in September, 1826, of consumption, and left three children. The winter of 1826 and 1827, when we lived
118 in Sheafe street, was one of great suffering with those of us at home. Mother had no boarders that winter; sister Eliza and myself were sent morning after morning to him, to see if we could get any rent for the sustenance of the day, and I never remember of his giving us more than a small piece of money, and oftener sent us away without anything. He used to speak to us as if we were beggars—very harshly, as if we were coming to him to get what was not our due. He would sometimes throw a small piece of money at us, and tell us to go away.

To the 7th int. she saith: My mother loaned him $60 in 1820, for which he gave his note. I have asked him repeatedly to pay the interest on it if he would not the principal, and he always refused, and never paid either principal or interest, and the last time I asked him, he laughed at me and said, "that was outlawed long ago, and mother had better burn that up."

To the 8th int. she saith: They never did, and I never knew them to report to mother, or consult with her in reference to their doings as administrators. Daniel never visited us as a brother or a son would visit a family. He visited us very seldom.

To the 9th int. she saith: I remember when we lived in Hanover street, in 1830, in winter, the first part of the year, he brought a paper two different mornings just after breakfast. He said it was the same paper on the second calling, which he brought before, which he urged mother very hard to sign, but she would not do it, and did not. She asked him to read the paper, and I recollect he took it up, and read a few words and skipped a long sentence, then read again, then skipped, and then muttered over, "Well, it's no use my reading it. I have told you what it is." Mother did not read it. She had no spectacles, and did not pretend to read writing, or do fine sewing. Her eyes were bad at that time. He said it was a paper allowing

him to sell as much property as would pay off father's debts. In 1828, I think, my brother David J. gave to mother notes of her brother William Jones. He said to mother, I give you these notes to make me comfortable. (My brother David was subject to fits of insanity at that time, and he feared he would be troublesome to mother, and he wished to compensate her.) The family took up goods on these notes. from Wm. Jones, amounting to $200, (who kept a dry goods store,) which amount was not endorsed on the notes. The notes being nearly outlawed, Daniel came to mother one morning, and asked her to let him have them, so that he might get them renewed for her. Mother was in distressed circumstances at that time, receiving very little rent, and she gave him two of the notes, after his teasing her a good deal, and she reserved one, but she did not give those two until he brought uncle Joseph Badger, who, together with himself, signed a paper that the notes should be returned, after being renewed, without injury to William Jones. The next morning Daniel came to mother and said he could do nothing without the other note,
119 and she gave it to him after considerable talk, and with great reluctance, and enjoined upon him again not to hurt William. He caused uncle Wm. Jones' failure, and sold his property, and reserved the amount of the notes with interest, which was over $2,000. This money he never accounted to mother for, in any way, or gave her any of it, and said he should keep it; and mother talked to him a great deal, and said, "Daniel, I hope you will pay uncle William, at least, the $200 which is due on the notes; and he said he would see to it, or something like that, and shortly after that mother sent me to his store to see if he would let me have the $200 to pay to uncle Wm. Jones. He told me that if mother would sign a paper certifying that he had honorably discharged every duty as administrator in settling the estate, and freeing him from all charges which might hereafter be brought up against him, he would give her the $200. I told him that mother knew too much of him to sign such a paper, and she never would do it, and that if he had'nt a clearance now he never would have. Mother was with me at his store a short time afterwards, and he proposed to her the same thing, to sign the paper. She told him she never would sign such a paper for him. She said, "Daniel, you know that you have wronged both me and the children." He afterwards wrote a paper to the same effect, and sent it up on Sunday noon, by his son Erastus, for mother to sign; and mother kept the paper, and sent back word by Erastus, that he need not send her any more papers to sign.

To the 10th int. she saith : I recollect one Monday morning in the spring, March, 1830, he brought a paper. He went into the kitchen below stairs where mother and Eliza were washing. Mother and Eliza, Daniel, and a young man (he brought with him) came up stairs in the parlor, and stood around a table, and Daniel opened a paper, and said, "Mother I want you to sign this. It is almost court time, and it muts be entered at 9 o'clock." Mother said, "Daniel I am not fit for anything; I am washing; David has been crazy all night and I have had no sleep." Daniel was in great excitement and told mother

that the paper was of no moment to her, but was essential to paying off father's debts, and no more property should be sold than was needful for that purpose." Mother asked him to read it. He said he had not time, he couldn't parley any longer; all he wanted was her name, and he had told her the contents of the paper. The paper was not read by any one and mother did not sign it. He said he couldn't leave it as it was to go into court at 9 o'clock. I remember sister Eliza and Elmira were present; I can't say what others. Mother had something ailing her eyes. She was under care of Doctor Ingalls, or Snow at that time. She also had consulted Doctor Ware, and Doctor Dix attended her for nearly two years and cured her. She did not wear spectacles until she was over fifty years of age.

To the 11th int. she saith: At the same time mentioned in my last answer he turned to Almira and asked her to sign the paper. She told him she would have nothing to do with papers presented by him. There were words passed about his wronging the family. Daniel said, "Remember, Miss, you are talking before this young man." Almira answered, "I shall endeavor to do what is right, and you cannot frighten me to act otherwise." Almira did not sign the paper.

To the 12th int. she saith: I have heard him say many times that he meant to have the whole of father's estate, that he was the eldest son, and it belonged to him.

To the 13th int. she saith: I have heard mother tell Daniel several times that he ought to bring in the papers concerning the settling of the estate, for herself and family to examine them. He never brought any papers to be examined, and never would give any satisfaction of matters concerning the estate. She after remonstrated with him and told him she wished she was able to employ a lawyer. And mother remonstrated with Joseph Badger, in letting Daniel have the whole management of the estate, and told him he was culpable in not looking after it. I have heard sister Almira talk to Joseph Badger about his not attending to his affairs as administrator of the estate, and that he was doing wrong. He always maintained a listless manner, and said he thought Daniel would do about right, and there was no use of his looking after things.

To the 14th int. she saith: I remember the sale of the estate of North Federal court, in February, 1831. I know mother felt very badly about her dower being sold. And Daniel told mother before me it couldn't be helped, father's debts must be paid. Mother supposed it was all right, and that Daniel had power to sell it, and she made up her mind to buy it in. She employed Adin Hall, a broker in Boston, to buy it in. He did buy it in for $400. That was not enough to pay the debts, and one-fifteenth of estate in Broad street was sold to defray the debt, the whole debt being about $750. Daniel came in often to see if mother had raised the money. He said the creditors wanted it, and she must get it. She said to Daniel, "why can't you raise the money," and Daniel answered there is no use of your trying to raise the money for it, you can never pay for it. or words to that effect. She sent me to the store shortly afterwards to see if he

had tried to get any one to take the mortgage. He told me it was no use for mother to try to hold it, she never could get the money. In a few days after this, we heard through Mrs. Johnson, my aunt, that three men came down to the North Federal court, and got into the window of mother's house, put out a flag, and after a short time took it in again and went away. Mother said, "Is it possible that Daniel has sold that house again, and not let me know about it." Mrs. Sohnson said that Daniel Badger was one of the three men. I know Daniel came to the house shortly afterwards. I think mother sent for him, and she said to him, before me, Daniel, have you been selling that North Federal court house, over again? She told him what Mrs. Johnson had said, that three men got into the window, put out a flag, and that he was one of the three men. The house
121 was unoccupied at the time, and mother had the key. Daniel told her that he couldn't wait for the money any longer, that there was no use in trying to raise it, or in other words to that effect.

To the 15th int. she saith: I have answered this question in my preceding answer.

To the 16th int. she saith: I was present when Daniel spoke to mother, when we lived in Sheafe street. He told her it was best for her to take North street and North Federal court property for her dower. She told him she thought it a pity that she couldn't have a house fit to live in, and wished the Lynde street house could have been saved for her. I remember Robert Badger (one of the appraisers, I think,) came in and told mother that he thought it well for her to take North Federal court and Broad street property.

To the 17th int. she saith: Samuel D. Parker, counsellor at law, settled the estate of the North Federal court with the city when it was taken, and formed part of Blackstone street. Mother spoke to him about the settling of father's estate, and asked him if the affairs could not be looked into, as she felt that something ought to be done. Parker rather reluctantly, after being somewhat pressed by mother to give his opinion, said: "Daniel is pretty cunning, pretty cunning, but he did not think him very secure." He said he thought if the estate had been settled in a proper manner the heirs might have realized from ten to fifteen hundred dollars apiece. He mentioned an estate which stood very similar to father's when he died. He stated that there had been no transfer of deeds on record of my father's estate, that everything stood as formerly.

To the 18th int. she saith: I know Daniel always had to do with the estate after father's death, and collected the rents. I have no personal knowledge of his paying rents only through sister Eliza and myself, and that was in very small amounts. After the dower was set off he had the management of the Broad street house. The store he occupied for his own purposes, and gave mother $100 a year. About a year after mother's dower was set off he let an excellent tenant by the name of Mrs. Sinclair move out. She told mother that had she known that she owned the property she would not have moved, but Daniel told her that he owned the property, and that he would put on no repairs whatever. He afterwards let it out to Irish,

and he said they paid very poorly. Mother received scarcely any rent from him, and mother was so perplexed that she had to get Adin Hall to manage the property for her. And mother wished to get Daniel out of the store, and let the whole property to one individual. Mr. Hall sent several, but Daniel dissuaded them from hiring, and as Daniel offered to take the premises, Mr. Hall thought it best for mother's present good to let him have it. Daniel told me that if mother made him leave the store that she would suffer for it. That he should take the counters and pictures with him. He always paid his rent by small sums, and that we obtained by great difficulty.

122 His wife (Erastus's mother) has often paid me a tiresome number of times. I remember he twice threatened to take it from me, and she prevented him.

To the 19th int. she saith: I am familiar with my mother's handwriting, and know her signature I saw the petition mentioned, a copy of which is hereto annexed, and marked Exhibit C, on the 24th of May, 1861, in Boston. It certainly was not signed by her, and is not in her handwriting.

To the 20th int. she saith: Mother always told me that father's estate would be divided amongst us after her death; that she had never signed it away. She said this in the presence of all of us that were in New York at home—Jacob, James, Almira, and myself. She said that she owed Daniel nothing, and if he had bills against her they would be false. About three weeks before her death, she requested me to write a letter to Daniel, for him to send her rent that was due, as she was entirely out of money and very sick. He took no notice of it to answer it. About six days after, she requested me to write again, and enclose the letter written to Daniel, to Erastus. I did so, and left Daniel's letter unsealed, so that Erastus might read it, and urged Erastus to get it for mother. These letters were taken no notice of, nor answered. The rent due at mother's death remains still unpaid, amounting to about $80.

In answer to cross-interrogatories propounded, she saith:

To the 1st cross she saith: I was born the 12th of April, 1816.

To the 2d cross she saith: Yes, I presume we were.

To the 3d cross she saith: We are not. We have sold our interest.

To the 4th cross she saith: I do not expect to receive anything if anything is recovered, as I have no interest in the matter.

To the 5th cross she saith: The other heirs sold out, and I sold out also, and signed a deed. I do not know that any one requested me to sell out, I did so because the others did. I sold it for $180, to James W. Badger. We did not agree to pay back in case of non-recovery. There was no understanding about it, except that we sold out, and received pay. I havn't the deed, and therefore cannot give a copy.

To the 6th cross she saith: I suppose it was given up.

To the 7th cross she saith: I presume we did. We did it at the time it was done, I suppose. I don't know the date. We must have

known it at about that time. I left the thing to the gentlemen and coincided in what they did.

To the 8th cross she saith: I left my interest in the former suit for the gentlemen to manage, and this suit I have nothing to do with. That is all I know about it.

To the 9th cross she saith: We have not furnished any means, or expect to, or agreed to in this suit. We have no interest in it whatever.

123 To the 10th cross she saith: It will not be to our pecuniary gain or loss.

To the 11th cross she saith: Because we have no interest in it.

To the 12th cross she saith: I testify from my personal knowledge and recollection. My mother always kept boarders after my father's death. I cannot remember the names. Mr. and Mrs. Blaisdell boarded with us a long time. Mr. Barber and his son boarded with us a number of years. Mr. Hutchings boarded with us, and others whose names I can't remember boarded less time, besides my brothers, as I have stated in former answers.

To the 13th cross she saith: He never had any ability to do for us, as I have already stated in my direct answer, and I state from personal knowledge.

To the 14th cross she saith: I know, because I have heard my mother speak to Daniel and Joseph about it, and I heard her tell them that they never had reported their doings, although often requested to do so. I can say that they were not on friendly terms in the strict sense of the word.

To the 15th cross she saith: I cannot give it any more definite than I have done. I do not pretend to state the exact language, but I give the substance, but cannot state that it was every word that was said.

To the 16th int. she saith: She did not sign them. I was present, and they were not read by any one present.

To the 17th cross she saith: I know that it was in March, 1830, and I know it was a petition to sell off father's estate, or a portion of it, because Daniel said so, and identify it for that reason.

To the 18th cross she saith: I know it was the original paper, because the clerk of the court showed it to me. But I know that the signature to the paper is not my mother's handwriting.

To the 19th cross she saith: Mother was an intelligent woman as a general thing, but not a literary woman. Her mind was not adapted to searching into such matters as investigating into affairs of the estate. She died September 25, 1855, nearly 74 years old.

To the 20th cross she saith: I have not, to all the question.

To the 21st cross-int. she saith: I have stated from my own personal recollections throughout, and no one has ever assisted me. Mr. Robb has conversed with me, and ascertained what knowledge I possessed in reference to the matter.

To the 2d 21st cross she saith: I do not know.

To the 22d cross-int. she saith: I never felt that he was my friend.

I spoke with him at mother's funeral, in Jamaica Plain, Massachusetts. That is the last time I saw him.

To the 23 cross-int. she saith: I don't know of any but my sister Almira, and have not conversed with her concerning it.

To the 24th cross-int. she saith: They have not.

To the 25th cross-int. she saith: I have not, and they have not.

To the 26th cross-int. she saith: I have not, and they have not.

To the 27th cross-int. she saith: I have not.

124 To the 28th cross she saith: I think I have answered this interrogatory fully in my direct. She had an inflammation of the eyes, which lasted for years, sometime worse than at others.

MARY H. B. STURGES.

Taken, subscribed, and sworn to before me this 19th July, 1861.

R. E. STILLWELL,
U. S. Com'r.

Exhibit C.

To the hon. the justices of the supreme judicial court begun and held at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March, A. D. 1830.

Humbly shows Joseph Badger and Daniel B. Badger, of said Boston, as they are administrators of the estate of Daniel Badger, late of said Boston, gentleman, deceased, intestate, that the just debts which the intestate owed at the time of his death which now remain unpaid, together with the money advanced for the payment of just debts, and the charges of administration as settled and allowed by the judge of probate at a court held by him at said Boston, on Monday, the seventeenth day of September, A. D. 1827, amount to the sum of four thousand six hundred and seventy-six dollars and thirty-three cents. That there is no personal estate wherewith to discharge the same and that the real estate undisposed of under a former order of sale, was of the value of eight thousand eight hundred dollars according to the appraisement in the inventory; but a part thereof is subject to the widow's dower.

And your petitioners further show that heretofore, at a probate court held at said Boston, on the 9th day of October, A. D. 1820, they presented a list of debts due from the intestate and obtained license the thirteenth day of November thereafter to sell the real estate for the payment thereof, which was partly executed, to wit, at a probate court held at said Boston, on Monday, the fifteenth day of October, A. D. 1827, upon their application, (part of the debts contained in said list remaining still unpaid,) license was granted to them to sell so much of the real estate of the deceased—where the same could be best spared—as would raise the aforesaid sum of four thousand six hundred and seventy-six dollars and thirty-three cents, and thirty dollars more for incidental charges. That your peti-

125 tioners refrained from exercising the entire power granted by

said first license, and the authority granted to them by said second license, at the solicitation of some of the heirs and the guardian of the others, in the belief that the real estate was depressed below its true value, and that there would be a change restoring this nearer to the value, according to the original appraisement, than it then was; but no beneficial alteration has taken place in this respect, and the year in which the said licenses might have been respectively executed has expired.

Wherefore your petitioners pray for a renewal of said licenses, and that they may now be empowered to sell so much of said real estate of the deceased as will enable them to pay said debts, money advanced, charges of administration, and charges of sale. And, as in duty bound, &c.

JOSEPH BADGER,
DANIEL B. BADGER, *Adm'rs.*

We, the undersigned, children and heirs at law of Daniel Badger, deceased, acknowledge to have received due notice of this petition, and certify that we have no objection to the granting thereof.

DANIEL B. BADGER,
For self and as owner of share of David J. Badger.
JACOB BADGER,
For self and as Guardian of A. H. Badger.
ALMIRA A. BADGER.
As Guardian of my children, Eliza M., Alfred C., Mary H. B., and James W. Badger, and as widow of said deceased,
ANN BADGER.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

I, George C. Wilde, clerk of the supreme judicial court within and for said county, hereby certify that the foregoing is a true copy of the original petition now on file in the clerk's office.

[L. S.] In witness whereof, I have hereto set my hand and affixed the seal of said court this sixteenth day of July, A. D. 1861.

GEO. C. WILDE, *Clerk.*

126 Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

JAMES W. BADGER
vs.
E. B. BADGER *et al.*

Samuel D. Parker, one of the respondents, objects to all the interrogatories to the witnesses, filed by the complainant, (except the nineteenth interrogatory to Almira A. Badger, and the seventeenth interrogatory to Mary H. B. Sturgis,) as leading, irrelevant, and incompetent, and he files the following cross-interrogatories *de bene esse* to be answered by said Almira A. Badger:

1st. State your precise age.

2. If you answer the complainant's nineteenth interrogatory affirmatively, state the year, the month, the day of the month, the day of the week, and at what hour, morning or evening, and also in what place or house it occurred, and who were present, and who joined in the supposed conversation, and how it happened that the parties met together, and what was the purpose of the supposed interview.

3d. Did you, or any other person in your presence, make any written record or memorandum of such supposed conversation? If yea, who wrote it, where and when did you first see it, and when did you last see it? And if in your possession, annex it to your answer to this interrogatory.

4th. State whether anybody, and who, in said supposed conversation, first spoke upon the subject, and whether what is supposed Mr. Parker then said was in response to anything said to him by any one, and by whom.

5th. State the exact words spoken by Mr. Parker in said supposed conversation, and when your attention was first called to them, and who spoke to you about it, and when the first time. And have you recently, within three or four years, had any conversation with anybody, and whom, and when, upon the subject of said supposed conversation, and how many times have you conversed about it with Mary H. B. Sturgis and James W. Badger, or either of them?

6th. Have you received any letters or letter from anybody, and whom, and when, upon this subject, and have you read any letters or letter to other persons or person upon the subject. If yea, who wrote such letters, and when, and to whom were they directed?

127 7th. What was your exact age when such supposed conversation occurred, and how happened you to be there and then?

8th. Have you made or witnessed any deed or instrument conveying or purporting to convey your supposed interest in your father or mother's estate, or the supposed interest of any of your brothers or sisters therein to James W. Badger, the present complainant, or to any other person? If yea, when and where, and for what consideration or price, and under what agreement, and have you received any payment therefor? If yea, how much, and when was it paid, and by whom, and was it in money or other things, or in obligations and promises of any kind; and was such conveyance made for any and what particular purpose, and are you to be benefited in any and what way, if the complainant prevails in this suit; and how and what have you to expect hereafter, if he succeeds in this action?

SAM'L D. PARKER, *for himself.*

Circuit court United States.

MASSACHUSETTS DISTRICT, *ss:*

JAMES W. BADGER
vs.
E. B. BADGER *et al.*

Samuel D. Parker, one of the respondents, objects to all the interrogatories to the witnesses, filed by the complainant, (except the nineteenth interrogatory to Almira A. Badger, and the seventeenth interrogatory to Mary H. B. Sturgis,) as leading, irrelevant, and incompetent; and he files the following cross-interrogatories *de bene esse*, to be answered by the said Mary H. B. Sturgis:

1. State your precise age.

2. If you answer the complainant's seventeenth interrogatory affirmatively, state the year, the month, the day of the month, the day of the week, and at what hour, morning or evening, and also in what place or house it occurred, and who were present, and who joined in the supposed conversation, and how it happened that the parties met together, and what was the purpose of the supposed interview.

3d. Did you, or any other person in your presence, make any written record or memorandum of such supposed conversation? If
128 yea, who wrote it, where and when did you first see it, and when did you last see it, and if in your possession, annex it to your answer to this interrogatory?

4th. State, whether anybody, and who, in said supposed conversation first spoke on the subject, and whether what is supposed Mr. Parker then said was in response to anything said to him by any one, and by whom?

5. State the exact words spoken by Mr. Parker in said supposed conversation, and when your attention was first called to them, and who spoke to you about it, and when the first time, and have you recently, within three or four years, had any conversation with anybody, and whom, and when, upon the subject of said supposed conversation and how many times have you conversed about it with Almira A. Badger and James W. Badger, or either of them?

6. Have you received any letters or letter from anybody, and whom, and when, upon this subject, and have you read any letters or letter to other person or persons upon the subject? If yea, who wrote such letters, and when, and to whom were they directed?

7th. What was your exact age when such supposed conversation occurred, and how happened you to be there and then?

8th. Have you made or witnessed any deed or instrument conveying or purporting to convey your supposed interest in your father or mother's estate, or the supposed interest of any of your brothers or sisters therein, to James W. Badger, the present complainant, or to any other person? If yea, when and where, and for what consideration or price, and under what agreement, and have you received any payment therefor? If yea, how much and when was it paid, and by

whom; and was it in money or other things, or in obligations or promises of any kind? And was such conveyance made for any and what particular purpose, and are you to be benefited in any and what way, if the complainant prevails in this suit and how, and what have you to expect hereafter if he succeeds in this action?

SAMUEL D. PARKER, *for himself.*

129 UNITED STATES OF AMERICA,
Southern District of New York, City, County, and State of New York, ss:

Be it remembered, that on this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stillwell, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be, and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Almira A. Badger, to testify and the truth to say, on the part and behalf of the respondents in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States, for the district of Massachusetts, wherein James W. Badger is complainant, and E. B. Badger and others are defendants.

And the said Almira A. Badger, being about the age of 54 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Almira A. Badger, and *he* did thereupon depose, testify, and say as follows, viz:

To the 1st cross-interrogatory she saith: I am 54 years of age last April.

To the 2d cross she saith: The house in North Federal Court was taken down in the spring of 1834, when the city was forming Blackstone street, and it was two or three years after that when Mr. Parker called on that particular business. It was in the evening of the day. I know that fact, because we were just going to tea, but in what year, or month, or day of the month, or week, I do not know. It occurred in our house in Myrtle street. My sister Mary, myself, and brother were present. My mother was the only one who conversed with him at that time. Mr. Parker called to settle my mother's matters with the city, in regard to the house they had taken.

130 To the 3d cross she saith: I did not, nor any other person, to my knowledge. We didn't deem it necessary at that time.

To the 4th cross she saith: My mother first spoke to him upon the subject, and what Mr. Parker said was in response to her questions.

To the 5th cross she saith: It was in answer to some interrogatories by mother in regard to the settlement of the estate by Daniel. She told him that she was not satisfied, and she mentioned several facts to him in regard to the settlement, and asked him (Mr. Parker) if something could not be done, or whether it would not be proper to have it investigated. He answered, "Daniel is pretty cunning, pretty cunning, but I do not think him very secure." He seemed anxious to waive the subject, but mother continued to converse with him. Mr. Parker then made the remark that it appeared to have been a plan laid by the administrators at the beginning, for if the estate had been settled as it appeared to him it should have been, the heirs might have received from ten to fifteen hundred dollars apiece. (He at the time alluded to an estate similarly situated to ours, belonging to one Mr. Cotton, I think was the name.) There was considerably more said by mother on the subject which I do not particularly remember. He finally remarked that the estate had not been transferred to Daniel on record. That is all I can remember of the conversation. My attention was first called to the conversation at the time it was had, and when Mr. Parker went out of the house my mother said that she supposed he (Mr. Parker) would have taken more interest in the case if he had supposed he would have been remunerated for it. I conversed with Mr. Robb about it since the suit has been pending. I have not talked with James at all about it, but have conversed with Mrs. Sturgis once or twice about it.

To the 6th cross she saith: I have not received any letters upon the subject, and have not read any letter from any person on the subject.

To the 7th cross she saith: It was at our house, and I must have been from 27 to 29 years of age. As I can't tell the exact year when the conversation occurred, I cannot give my exact age at that time.

To the 8th cross she saith: I signed a deed which conveyed it to James W. Badger. I can't tell when it was signed, but it was in the city of New York, before a commissioner. I received an equivalent therefor, that is, $100 in cash and a note for $180, from James W. Badger. I did not inquire into the purpose. I was willing to sell it to him. I don't expect anything if the complainant succeed in this action.

ALMIRA A. BADGER.

Subscribed and sworn to before me this 24th October, 1861.

R. E. STILLWELL,
U. S. Com'r.

131 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and sixty-one, I, R. E. Stillwell, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at my office, United States court buildings, No. 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Mary H. B. Sturgis, to testify and the truth to say, on the part and behalf of the respondents, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the district of Massachusetts, wherein James W. Badger is plaintiff, and E. B. Badger and others are defendants.

And the said Mary H. B. Sturgis, being about the age of 45 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Mary H. B. Sturgis, and *he* did thereupon depose, testify, and say as follows, viz:

To the 1st cross-interrogatory she saith: I was born in 1816, on the 12th of April, and consequently am 45 years of age.

To the 2d cross-int. she saith: I cannot state the year, the month, the day of the month, nor the day of the week, but I think it was two or three years after 1834, when the city took mother's house down, at the time of forming Blackstone street. It was in the early part of the evening when Mr. Parker called at our house in Myrtle street, on matter relating to the settling the Federal Court estate, and mother, my sister Almira, and myself were there. I don't remember any other person. Mother joined in the conversation with Mr. Parker.

To the 3d cross-int. she saith: Myself nor any other person made any record in writing at the time of such conversation.

132 To the 4th cross she saith: Mother asked him the questions, and he answered; these answers were made in response to the questions.

To the 5th cross: In answer to mother's question to Mr. Parker, as to whether the administrators, Joseph and Daniel B. Badger's affairs, regarding to the settlement of father's estate, could not be investigated, he seemed rather slow in answering, but said, "Daniel is pretty cunning, pretty cunning, but he didn't think him very secure." He said it seemed to him if the estate had been settled in the right manner, we should have realized each from 10 to 1,500 dollars apiece.

He mentioned here an estate that seemed to be left pretty much as father's was, wherein the heirs realized about that sum. He said that there had been no transfer of deeds on record. My attention was first called to it at that time. I had no conversation with any one in reference to it until I made the facts known to Mr. Robb, within 3 or 4 years past. I don't know that I have ever conversed with James upon the subject. Almira and myself have spoken upon the subject two or three times since we made known the facts to Mr. Robb.

To the 6th cross: I have not received any letter upon this subject, neither have I read or seen any upon this subject.

To the 7th: I was at home. I was about 20 years of age.

To the 8th: I have signed a deed conveying my interest to my brother James. I can't state the time, but it was in an office in New York, and for the consideration of $180, which was given me in the form of a note by my brother James W. Badger. The conveyance was not made for any other purpose on my part, than to sell my interest. I do not expect any interest whatever in the result of this suit, nor any benefit if the complainant succeeds.

MARY H. B. STURGES.

Subscribed and sworn to before me this 24th October, 1861.

R. E. STILLWELL, *U. S. Com.*

133 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, R. E. Stillwell, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York in the second circut, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing *deposition* is, and the fact is, the *witnesses* are material and necessary in the cause in the caption of the said deposition named, and that *they* reside at a greater distance than one hundred miles from the place of trial of said cause.

I further certify that notification of the time and place of taking the said *deposition* signed by me, was made out and served on the ——— to be present at the taking of the said *deposition*, and to put interrogatories, if he or they might think fit.

I further certify that on the 24th day of October, in the year of our Lord one thousand eight hundred and sixty-one, I was attended by the *witnesses*, who were of sound mind and lawful age, and the *witnesses* were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth,

and the *depositions* were by me reduced to writing in the presence of the *witnesses*, and from their *statements;* andafter carefully reading the same to the *witnesses*, they subscribed the same in my presence. I have retained the said *deposition* in my possession, for the purpose of transmitting the same to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said *depositions* and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this twenty-fourth day of October, in the year of our Lord one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-*sixty*.

R. E. STILLWELL,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

134 UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.] The circuit court of the United States within and for the Massachusetts district.

To Charles P. Curtis, jun'r, of Boston, esquire, or any commissioner of the circuit court of the United States in the city or State of New York.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of Moses M. Smith, of the city of Boston, a witness to be examined on behalf of the plaintiff, and to be used in a certain cause now pending in said court, wherein James W. Badger, plaintiff, *vs.* Daniel B. Badger and al., defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this thirty-first day of December, in the year of our Lord one thousand eight hundred and sixty-one.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his
135 deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

The execution of the within commission appears in certain schedules hereto annexed.

R. E. STILLWELL, *U. S. Com'r.*

CIRCUIT COURT UNITED STATES,
Massachusetts District.

JAMES W. BADGER
vs.
DANIEL B. BADGER *et al.* } In equity.

Interrogatories to be propounded to Moses M. Smith, of the city of Boston, a witness to be examined on behalf of the plaintiff.

1. State your name, age, occupation, and place of residence.

2. Are you related to the plaintiff in this case, and how?

3. Were you acquainted with the late Mrs. Ann Badger, mother of the late Daniel B. Badger, and her family? If yea, when did you first know them, and where did they reside at that time?

4. Please state whether or not you were ever present when the conduct of the said Daniel B., as administrator of his father's estate, was a subject of conversation by said Ann Badger with any of her children. If yea, please state what was said by either and all of them upon that subject, and when and how often the same was talked of between them.

5. Whether or not the said Daniel B. was in the habit of visiting his mother's house to your knowledge.

6. Whether or not you collected any portion of the rents of the estate in Broad street, from said Daniel B. for Mrs. Ann Badger. If yea, state whether he paid said rents promptly, or how otherwise.

136 7. Did you ever have any conversation with said Daniel B. about a promissory note signed by him, payable to his mother? If yea, state what was said in relation to the same. What has become of said note? When and where did you last see it? And state all you know about it.

8. Whether or not you ever heard any conversation between said Daniel B. and his mother about her signing any and what paper? If yea, state what was said by each of them in relation thereto.

9. Whether or not Edward J. Jones said anything to you about the conduct of said Daniel B., as administrator of his father's estate, and about the title of the said Daniel B. to the estates in question in this suit, and about this case. If yea, state what was said upon each of those subjects.

10. Please examine the paper hereto annexed and marked "Exhibit A," and especially the signatures, and state whether or not you signed the same, and whether or not you are acquainted with the handwriting of either, and which, of the other persons whose names are signed thereto. If yea, state whether or not said signatures are in their own proper handwriting.

11. Whether or not do you know the handwriting of said Daniel B. Badger, and are familiar with his signature. If yea, examine the exhibits annexed hereto, and marked B, C, and D, and say whether either, or any part of either, is in the handwriting of said Daniel B. If yea, which or what part? Please state what, if anything, you know of said papers.

12. Whether or not did you ever have any conversation with said Daniel B. in reference to his conduct as administrator. If yea, when and what was said by each of you?

13. Whether or not you are familiar with the handwriting of the late Mrs. Ann Badger, and know her signature. If yea, whether or not you have seen the petition signed by Joseph Badger and Daniel B. Badger, administrators, to the supreme judicial court, within and for the county of Suffolk, March term, 1830, for leave to sell the real estate of the late Daniel Badger? If yea, when and where did you see the same, and whether or not the writing upon said petition, purporting to be the consent of "Ann Badger," to the granting thereof, was signed by her, and whether or not the signature thereto—"Ann Badger,"—is in the handwriting of the said Mrs. Ann Badger.

14. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JAS. B. ROBB,
Solicitor for Pl'ff.

137 *Exhibit A.*

Know all men by these presents, that we, Augustus H. Badger, Almira A. Badger, Jacob Badger, all of Brooklyn, in the State of New York; Benaiah P. Sturgis, of Goshen, in said State, and Mary H. B. Sturgis, his wife in her own right; Moses M. Smith, doing business in the city of Boston, Commonwealth of Massachusetts, and Eliza M. Smith, his wife, in her own right; and Alfred C. Badger, all of the city, county, and State of New York, aforesaid, in consideration of the sum of one thousand dollars to us paid by James W. Badger, of said Brooklyn, the receipt whereof is hereby acknowledged, do hereby assign, sell, remise, release, and forever quitclaim

unto the said James W. Badger, of the said Brooklyn, all our right, title, and interest in, to, or growing out of, the following described estates, whether legal or equitable, and whether the same be owned and possessed by us as tenants, in common with Daniel B. Badger, David J. Badger, and the said James W. Badger, or whether the same be held in trust by the said Daniel B., for our use and benefit, meaning and intending hereby to vest in the said James W. Badger all our right, title, and interest, of whatever nature, in and to said real estate, and to the rents and profits thereof, to which we are entitled in law and equity, to wit: a lot of land situated in Distil-house Square, so called, in said city of Boston, and bounded as follows, viz: beginning in front on the public street in said square, there measuring sixty feet, more or less, northwesterly on land now or late of the heirs of Jacob Tidd, deceased, there measuring sixty-two feet and two inches, northeasterly on land set off to Jonathan Heath, and there measuring sixty-four feet and six inches, then turning and running southerly, bounding easterly on land of the heirs of Elijah Uttley, deceased, twenty-four feet and two inches, then turning at right angles, and running easterly two feet one inch and one half, then turning again at right angles and running southerly to Distil-house Square thirty-eight feet. Also a lot of land with dwelling-house thereon, situated in Broad street, in said Boston, numbered one hundred and fifty-one, and one hundred and fifty-three, bounded and described as follows, viz: beginning at a point by the middle of the partition wall, at the northeast corner of William B. Bradford's house, on Broad street, running easterly and bounded northerly on Broad street, eighteen feet to the centre of the wall, then running southerly by the middle of said wall, forty-four feet, to land of Jacob Wendell, then running westerly and bounded southerly on land of said Wendell by a stone wall, and including part of the same, there measuring twenty-eight feet, then running southerly and westerly by said stone wall and including part of it, bounded southerly and westerly by land now or late of said Wendell and Abraham Gibson, there measuring forty feet, to land of Joseph Baxter, jr., then running easterly and bounded northerly, partly on land of said Baxter, and partly on a passage-way leading to Broad street, there measuring fifteen
138 feet, then running southerly and bounded easterly on land now or late of said Bradford, there measuring six feet, and bounded northerly on said Bradford's land twelve feet, then running easterly and bounded northerly on house and land of said Bradford by the middle of the partition wall, there measuring fifty-seven feet, to the point of beginning on Broad street.

Also another lot of land now lying in Blackstone street, of said city of Boston, formerly situated on North Federal Court, so called, and bounded and described as follows, viz: northeasterly on the Mill Creek, there measuring fourteen feet six inches, northwesterly on land now or formerly of John Harvey, thirty-four feet, southwesterly on Link alley fourteen feet ten inches, and southeasterly on land now or formerly of David Jones, thirty-six feet six inches.

To have and to hold the above released premises, with all the privi-

leges and appurtenances thereto belonging, to the said James W. Badger, his heirs and assigns, to his and their use and behoof forever. And we, the said grantors, for ourselves and our heirs, executors, and administrators, do covenant with the said James W., his heirs and assigns, that the premises are free from all incumbrances made or suffered by us; and that we will, and our heirs, executors, and administrators shall warrant and defend the same to the said James W., his heirs assigns forever, against the lawful claims and demands of all persons claiming by, through, or under us, but against no other. In witness whereof, we, the said grantors, have hereunto set our hands and seals this eleventh day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

AUGUSTUS H. BADGER. [L. S.]
ALMIRA A. BADGER. [L. S.]
JACOB BADGER. [L. S.]
BENAIAH P. STURGES. [L. S.]
MARY H. B. STURGES. [L. S.]
ALFRED C. BADGER. [L. S.]
MOSES M. SMITH. [L. S.]
ELIZA M. SMITH. [L. S.]

Signed, sealed, and delivered in presence of—on 1st page, 2d line, the letter H, written over letter A before signing and sealing.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered, that on this twelfth day of June, one thousand eight hundred and fifty-eight, before me, the undersigned, Waldo Abbott, a notary public, residing in the city of New York, duly commissioned and qualified by the executive authority, and
139 under the laws of the State of Massachusetts, to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Augustus H. Badger, Almira A. Badger, Jacob Badger, Benaiah P. Sturges, Mary H. B., his wife, and Alfred C. Badger, to me known to be the individuals named in and who executed the foregoing conveyance, and acknowledged the above instrument to be their free act and deed.

[L. S.] In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

WALDO ABBOTT,
Notary Republic, State of New York.

NORFOLK, SS., *June 15th*, 1858.

Then personally appeared the above-named Moses M. and Eliza M. Smith, and acknowledged their signatures to be their free act and deed. Before me, WM. MACCARTY,
Justice of the Peace.

(B.)

April 17, 1827. For Alfred—
2 yds. cotton 40
1 yard B. cotton 13
53

Of D. B. B. Chg'd to Ann Badger.

(C.)

Mrs. Ann Badger, guardian to Henry A. Badger, to D. B. Badger, Dr.

Oct. 5th, 1826. Cash lent ..... $ 84
To cutting and making blue pants 1 25
2 09

Received pay't

DANIEL B. BADGER.

(D.)

Mrs. Ann Badger to D. B. Badger, Dr.

1824.
Jan'y 1. 1 shirt 60
" 25. 2 pr. hose 56
Apr. 25. 1 pr. hose 25
1 41

Received payment of Ann Badger, guardian to Augustus H. Badger.
D. B. BADGER.

140 CIRCUIT COURT UNITED STATES,
Massachusetts District, ss:

JAMES W. BADGER
vs.
DANIEL B. BADGER *et al.* } In equity.

The respondent, E. B. Badger, objects to the competency of Moses M. Smith as a witness in this case, on the ground of interest, and also to the competency, relevancy, and materiality of the 4, 5, 6, 7, 8, 9, 11th, 12th, 13th direct interrogatories propounded to said deponent and to the competency of said alleged Exhibit A, and also to the competency of the proof of signature sought for by said 13th direct interrogatory, and propounds the following cross interrogatories *de bene esse*, not waiving his objections aforesaid:

1. Was not your wife a sister of the late Daniel B. Badger, deceased, and is she not now living?

2. State when you signed the paper "Exhibit A," if you ever signed it; and when did your wife, Eliza M. Smith, sign it? Give the precise date of each signature. Where did you and she sign it? At

whose request? In whose handwriting is the body of said "Exhibit A?" Did you sign it before or after the present suit was commenced? In what place did you sign it, who was present, and what did you do with it after signing it?

3. Did you or your said wife receive anything for said signature, or signatures? If so, from whom, when, and what was it? State particularly. If money, state how much, and when and where and by whom paid, or if not money, state what you or she did receive therefor, if anything.

4. Did you give a receipt, or did your wife give any receipt, for what was received for said signature or signatures? If yea, to whom and when? And produce and annex a copy of said receipt; or if you cannot annex a copy of said receipt, state the substance thereof.

5. Upon what agreement or understanding, if any, did you or your wife sign said Exhibit A, as to the ultimate division of whatever might be recovered in this suit?

6. Do you not know, and will you not upon your oath say, that there was or is some understanding or agreement, express or implied, written or verbal, between James W. Badger and yourself and wife, or some of the parties to said Exhibit A, as to the division of whatever may be recovered in this suit?

7. Did you or your wife receive anything in consideration of your signatures to said Exhibit A? If so, what was it? Have you not returned the same, and if not, what has been done with it?

141 8. If you say, in answer to the preceding question, that you or your wife did receive anything in consideration of your signatures to said Exhibit A, was it not received upon the understanding that it was to be returned, and to whom; or upon the understanding that it was to be returned if this suit was not successful; or upon the understanding that it was in some way or in some settlement to be accounted for, or taken into consideration hereafter?

9. What are your circumstances, and where do you now reside, and with whom?

10. Have you not failed in business, or, if not failed in business, do you own, or have you for three years or four years past any property, and how much over and above your debts; and what is it, and where is it?

11. Have you not been advised or instructed to say that you have no interest in this suit?

12. Has your wife been examined as a witness in this case, and did she testify to the same facts that you have testified to?

13. Is not James W. Badger a clerk for his brother, Augustus H. Badger, and if not, when did he cease to be in his employ? About how long has he been in his employ?

14. Does not said James W. Badger live with his brother Jacob and his sister Almira Badger? Who owns or hires the house in which they live?

15. Has said James W. Badger any visible property to your personal knowledge? If yea, state what the same is.

16. Were not you and your wife parties to a former suit brought in this court against said Daniel B. Badger?

17. Who furnishes the money to carry on the present suit?

18. Upon your oath, do you not know, or have you not been informed by the said James W. Badger, or some one of his brothers or sisters, and which, that said James W. does not furnish any, or if any, not all of the money or aid to carry on this suit?

19. Do you not know, or have you not been informed by said James W., or by some of his brothers or sisters, and which one, that money or other aid has been or is to be furnished by some one else besides said James W., for the necessary expenses in carrying on this suit?

20. If, in answer to the 10th direct interrogatory, you testify to any signatures to said Exhibit A, besides those of yourself and wife, state if you ever saw either of said other persons write, and which of them, and when, and how often.

21. Have you not seen, read or heard read, all or some of the preceding direct or cross interrogatories, before they were read to you in their order by the commissioner taking your deposition? Has not the substance of them, or of some of them, been stated to you, and by whom, and when?

By E. MERWIN,
Solicitor of E. B. Badger.

142 Deposition of Moses M. Smith, produced, sworn, and examined the ninth day of January, 1861, at the city of New York, under and by virtue of a commission issued out of the circuit court of the United States within and for the Massachusetts district, in a certain cause therein depending and at issue between James W. Badger, plaintiff, and Daniel B. Badger and others, defendants.

To the first interrogatory he saith: Moses M. Smith; age 52 years; commission merchant; and reside in Brooklyn, State of New York.

To the second int. he saith: I am a brother-in-law to the plaintiff.

To the third int. he saith: I was. My first acquaintance with them was in 1833, and they resided in Myrtle street, Boston, at that time.

To the fourth int. he saith: I was. I was a mere casual visitor there at first, but became more intimate, and during our conversations, at different times, about one and another of the family, Daniel B. was brought up. Not ever being present there, he was made a subject of inquiry as to the causes, and the matter was opened to me by the daughters, and also by Mrs. Badger. She, Mrs. Badger, told me that Daniel's course had been such that he did not visit them; that he had done all he could to cheat her out of her property, as well as her children, and caused them a great deal of suffering and trouble, and that had he acted justly, she and all the children would have been left in very good circumstances; that he had borrowed notes of her to a considerable amount, he promising to return them to her after securing and collecting them, which he never did. She said the notes were given to her by her son David, to secure her for his

board, and for expenses incurred by him. She said that he had collected the amount of the notes, but had not paid over the proceeds. She said Daniel's course had been such that she had to resort to means very trying to her to procure means of living. I asked her why she did not call him to account for it. She replied that she had no means to do so, and that she had suffered so much in the past that she did not want to call up the matters again. She said she did not think now it could be done. I asked her why. She said she had complained to him several times that she had no advisor, and she replied that she knew no one to go to; and if she did, she had no means. She said Daniel advised her to go to S. D. Parker, who was a good lawyer, and one of the first in Boston. She said she applied to Mr. Parker for advice, and that he told her that Daniel had got things so mixed up that they could not then be overhauled; that no lawyer would undertake it; consequently she became impressed with the idea that there was no such thing as redress in the matter. She said
143 she found afterwards that said Parker was then acting for and advising said Daniel as his attorney. The matter was talked over very frequently between them (the family and myself) with reference to Daniel's conduct as administrator of his father's estate.

To the fifth int. he saith: He was not. He scarcely ever came more than once a year.

To the sixth int. he saith: I did collect rents from Daniel from estate in Broad street from 1849 till the time of her decease. He did not pay promptly. I had to call a number of times, and when he did pay, it would be in small instalments, and would generally be from one to two months after due, before I could get them from him.

To the seventh int. he saith: I did have a conversation with him in the store occupied by him. It was after his mother's decease. I called for the balance of rent that was due to his mother up to that time. He refused, saying that she owed him $50, which he had advanced some years before, and which she had never paid. I told him that could not be, as that was some years before, on a lease which was already cancelled, and that I had in my pocket a note of his given to her, which was outlawed for $60, dated September 4, 1827. He said it was no such thing. I took it out and showed it to him, and told him that it was so written that it could not be collected by anybody but himself, and he knew it; that it was not negotiable, and was made payable to herself, and that he never intended to pay it. The note is in the clerk's office of the circuit court at Boston. I saw it in November last at that place.

To the eighth int. he saith: I did during her residence at Jamaica Plain, Massachusetts. I resided with her there. He came there, and while there she told him that she had received a letter from William Jones, asking her if she could not pay some part or the whole of $200 due him, and she said to Daniel, that he ought to pay Jones, as he had borrowed the notes of her and collected them, which this amount of $200 should have been taken out of. She said the amount of $200 was for goods her family had had of him, and he replied that he would if she would sign a paper exonerating him from all blame

as administrator of his father's estate, and presented her a paper for her to sign, which was written out in pencil. She refused, and said she would not sign any paper to that effect, and he did not pay it.

To the 9th int. he saith: There was a conversation between him and me. I met him in Court street, Boston, one day after this suit was commenced, and after some conversation between us, he referred to the suit, and asked how it progressed. He said he had just read the bill with the hope that the plaintiff would succeed; that it was all wrong, and that Daniel's lawyer once told him that it was all fraudulent, and that it could be broken as easy as a turn of the hand, and that he did not feel friendly to Daniel, as he had treated his own daughter so badly, which was Jones's first wife. Previous to this conversation, he, Jones, was occupying a pew of Mrs. Badger's,
144 and I called upon him for the rent. He referred, in the conversation, to Daniel as administrator, and said that he (Daniel) had been to him for a loan on the Broad street property. Jones told him that he thought he could not give a good title to it. He replied that he would give him security on the Distil-House square property. Jones replied that he had examined into the estates, and that he could give no title to either of them, and did not think it safe to loan money on such security. Daniel said that it would be his at his mother's decease. Jones said that he was not sure of that, as the heirs intended to overhaul it at her decease.

To the 10th int. he saith: My signature to the same is in my own handwriting. I am acquainted with all the other signatures, with the exception of Mr. Sturgis, and should say that they are all in their own handwriting.

To the 11th int. he saith: I know the handwriting of Daniel B. Badger, and am familiar with his signature. I should say the whole of said exhibits are in his own handwriting. The papers were given to the plaintiff's counsel in this case by me, which were in my possession.

To the 12th int. he saith: I did. It was on a visit I made him for rent, at his house in Purchase street. He refused to pay. I replied to him that I did not like to be so annoyed; that I had been several times to him, and that he had promised to pay; that he had annoyed the family enough in the past, without troubling me. And some other words passed, when he ordered me from the house. He did not pay me the rent.

To the 13th int. he saith: I am acquainted with her signature as much as a person could be. She was not in the habit of writing it often. I have seen the petition spoken of several times. I saw the petition in the clerk's office several times during the last six months. The signature is not in her handwriting. She was not capable of writing so handsome a hand.

To the 14th int. he saith: At the time of Mrs. Badger's sickness, and just previous to her death, Daniel was applied to through me to pay some money on account of rent which would be due her in a short time, but he refused to let her have any. I made the application at

the request of Mrs. Badger, to pay expenses accrued during her sickness. I also recollect of a statement she made to her children who were present, that she had never signed any paper which would deprive them of any right they might have in the property.

M. M. SMITH.

To the cross interrogatories propounded he saith :

To the 1st cross he saith: She was and is living.

To the 2d cross she saith: We both signed it together. I could not state the exact date. It was in June, 1858. It was at my house at Jamaica Plain. I think it was sent to me by plaintiff's counsel, and it was signed before the suit was commenced. I don't know in whose handwriting the body of said exhibit is. There was no one present at the time of signing it but my own family. We acknowledged it before Mr. McCarthy, at his house in Jamaica Plain.

To the 3d cross he saith: My wife received a note of $180 for her interest in the matter, from James W. Badger. It was received at the same time we signed the paper, and came on with the paper.

To the 4th cross he saith: We gave no receipt whatever.

To the 5th cross he saith: There was no agreement or understanding whatever.

To the 6th cross he saith: There is none at all of any description whatever.

To the 7th cross he saith: We received the note and have it now. We have received $60 on the note.

To the 8th cross he saith: There was no understanding or agreement whatever about it.

To the 9th cross he saith: I reside in Brooklyn. I board with my sister, Almira Badger. I am not rich.

To the 10th cross he saith: I was unsuccessful in business some two years ago. I owned real estate at Jamaica Plain, where I resided, which I sold last summer.

To the 11th cross he saith: I have not.

To the 12th cross-int. he saith: She has been examined, but what she testified to I cannot say.

To the 13th cross-int. he saith: He is not, nor has he been for 12 years, to my knowledge.

To the 14th cross-int. he saith: He boards with his sister Almira, and hires the house for her, and she pays the rent. Jacob also boards with her.

To the 15th cross-int. he saith: He has real estate on Long Island; a considerable, and is reputed to be worth $20,000 independent of that.

To the 16th cross-int. he saith: We were.

To the 17th cross-int. he saith: I cannot say, but presume the plaintiff.

To the 18th cross-int. he saith: I have not.

To the 19th cross-int. he saith: I have not been so informed and do not know it.

To the 20th cross he saith: I have seen them all write quite often, except the one I have mentioned—Mr. Sturgis.

To the 21st cross-int. he saith: I have not seen them nor read them, nor had them stated to me, except as I stated to the plaintiff's counsel—the points upon which I could testify.

M. M. SMITH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 9th day of January, 1862, before me.

R. E. STILLWELL,
U. S. Com'r.

146 UNITED STATES OF AMERICA.
Massachusetts District, ss:

[L. S.] The circuit court of the United States within and for the Massachusetts district.

To any commissioner of the United States circuit court in the county of Suffolk, State of Massachusetts:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of Mrs. E. M. Smith, of Boston, witness to be examined on behalf of the plaintiff, and to be used in a certain cause now pending in said court, wherein James W. Badger is plaintiff *versus* Daniel B. Badger *et al.* defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein, enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witnesses, the honorable Roger B. Taney, at Boston, this second day of July, in the year of our Lord one thousand eight hundred and sixty-one.

H. W. FULLER, *Clerk.*

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission.

147 And you shall take such deposition in a place separate and

apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

Circuit court United States.

MASSACHUSETTS DISTRICT, ss., *May Term*, 1861.

JAMES W. BADGER
vs.
DANIEL B. BADGER & *al.*

Interrogatories to Mrs. E. M. Smith.

1st. Please state your name, age, and place of residence.

2d. Whether or not you are related to the plaintiff in this case, and how?

3d. Whether or not you were related to the late Daniel B. Badger, of the city of Boston, and how?

4th. Whether or not you resided in the city of Boston, between the years 1820 and 1831, inclusive? If yea, with whom, and in what place or places, and at what periods respectively in said places.

5th. If you shall have stated in answer to the preceding interrogatory that you resided with your mother, the late Mrs. Ann Badger, please state the names of the children who were living with her from time to time during that period, and what was the state of David J. Badger's health during that time?

6th. Whether or not your mother kept boarders during that period, and whether or not she had any other, and what, means of subsistence to your knowledge?

7th. Whether or not the said Daniel B., to your knowledge, ever rendered any, and what, assistance to your mother, in the support of the family during that period; and whether or not he was of any, and what, ability to do so?

8th. Whether or not you ever applied to said Daniel B. for money on behalf of your mother? If yea, under what circumstances,
148 and with what result? State fully. Also whether or not you ever asked him to pay a note held by your mother against him? If yea, whether or not he paid the same. State fully.

9th. Whether or not the said Daniel B., to your knowledge, reported to your mother, from time to time, during the above period, his doings as administrator, or consulted with her in reference thereto? Whether he was in the habit of visiting the house, or how otherwise? Whether or not the said Joseph Badger reported to your mother or consulted with her about his doings as administrator during that period?

10th. Were you present at any time when the said Daniel B. requested your mother to sign any, and what, papers? If yea, please

state when, and where, and what was said between them. State the occasion or occasions as nearly as you can, and what took place, and whether or not your mother ever read such paper or papers.

11th. Whether or not you were present when the said Daniel B. requested your mother to sign any paper relating to the sale of real estate belonging to the estate of your father? If yea, when was it, according to the best of your recollection? What was said and done by him? What was said by your mother? Who else was present? What was said by each and all of you, and whether or not your mother heard such paper read, or read the same, and whether or not she requested said Daniel B. to leave the same, and whether or not she signed the same, and whether or not her eyesight was good?

12th. Whether or not you have ever heard the said Daniel B. say anything about his rights as the eldest son to your father's estate? If yea, when, how often, and on what occasions, and what did he say?

13th. Whether or not you ever heard your mother say anything to the said Daniel B. upon the subject of his conduct as administrator? If yea, when and what? Whether or not anything was said by her about employing a lawyer? If yea, what?

14th. Whether or not you know, of your own knowledge, or from conversations between the said Daniel B. and other persons in your hearing, or from anything the said Daniel B. has said to you upon the subject, anything about the attempt to sell the estate in North Federal court, in the month of February, 1831; and also the alleged sale of the same again in the month of March, 1831? If yea, please state fully all you know upon the subject, and what you heard the said Daniel B. say about it.

15. Whether or not, in consequence of information which your mother received about the sale of the estate in North Federal court, in the month of March, 1831, she said anything to said Daniel B? If yea, what did she say to him, whether or not she told him of information she had received from a relative about it? If yea, what was it, and what reply did he make?

16. Whether or not you ever heard any conversation between the said Daniel B. and your mother in relation to the assignment of dower? If yea, when and what was said by each of them?

149 17. Whether or not you know who managed the real estate, and collected the rents belonging to the estate of your father after his death? If yea, who, and whether or not your mother received any, and what amount of the same? Please state, if you know, what the said estate rented for per annum.

18th. Whether or not you are familiar with your mother's handwriting, and know her signature? If yea, whether or not you have seen the petition signed by Joseph Badger, and Daniel B. Badger, administrators to the supreme judicial court within and for the county of Suffolk, March term, 1830, for leave to sell the real estate of your deceased father, of which the annexed is a copy? If yea, when did you see the same, and whether or not the writing upon said petition purporting to be the consent of your mother, "Ann Badger," to the granting thereof, was signed by her, and whether or not the

signature thereto, "Ann Badger," is in the handwriting of your mother?

19th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject, of this, your examination, or the matters in question, in this cause? If yea, set forth the same fully, and at large, in your answer.

JAMES W. BADGER.
By JAMES B. ROBB,
His Attorney.

CIRCUIT COURT UNITED STATES,
District of Massachusetts, ss:

JAMES W. BADGER
vs.
E. B. BADGER *et al.*

E. B. Badger, one of said respondents, objects to all of the interrogatories filed by the complainant to Mrs. E. M. Smith from the 6th to the 18th, inclusive, as leading, irrelevant, and incompetent, and also to the 18th, because the original paper, nor the copy referred to therein, are not produced or annexed, and files the following cross-interrogatories, *de bene esse*:

1. Please state your precise age.

150 2. Were not you one of the parties complainants to the former suit brought against your brother, Daniel B. Badger et al., in this court?

3. If anything is recovered in the present suit do not you or your husband expect to receive your proportion? If you say that neither of you expect to receive anything, state why not.

4. If you say that you or your husband have assigned or sold your or his interest, answer upon your oath, was not such assignment or sale requested or made in order that you might be a witness in this suit? Was it not agreed, or do you not understand or expect, that you or your husband are to receive your share or some share of whatever may be recovered, notwithstanding said assignment?

5. How came you or your husband to make a deed or assignment of the interest of either of you? Who requested you or him to do it? Was anything paid you or him therefor; and if so, what and by whom? And if anything was paid either of you, did either of you give a receipt or any writing therefor, and to whom? If so, annex a true copy of the same. Did not your husband or you agree to pay back whatever was paid or given either of you in case the plaintiff does not recover in this suit? Or if not, what was the agreement or understanding upon that point?

6. What became of the first suit against your brother, Daniel B. Badger and al., in this court?

7. Did you or your husband agree that the said former suit should be dismissed? If so, when was such agreement made? When did

you and when did he first know that it was dismissed? Who asked him or you to agree to dismiss it, and why did either of you agree to dismiss it, if you did agree?

8. Did either you or your husband pay the costs or any part thereof of the former suit? Who employed and paid the plaintiff's counsel in the former suit, and who employ and pay him in this suit? State all who are to share in whatever may be recovered in this suit.

9. Do not you or your husband, or have you or he not agreed to furnish or to bear some portion of the expense of carrying on this suit? Is there an agreement or understanding, express or implied, between you and your husband and the plaintiff, or between you or your husband and some other person or persons, and who, that you or he will pay, bear, or be responsible for, some proportion of the expenses of carrying on this suit? State fully such agreement or understanding.

10. If the plaintiff recovers in this suit, will it not be to the pecuniary advantage of you or your husband? And if he does not, will it not be to the pecuniary loss of you or your husband? Answer particularly as to each.

11. If you have answered the preceding question negatively, then state why it will not be to your advantage or loss as inquired of.

12. If you answer to the 6th direct interrogatory that your mother kept boarders between the years 1820 and 1831, state particularly in what year or years she kept boarders, in what street or
151 house, and give the names of such boarders, and state how you happen to have this information. Do you testify from your personal knowledge and recollection?

13. If, in answer to direct interrogatories, you say that your brother Daniel B. did not render any assistance to your mother, state how you know that he did not. Do you swear on your personal knowledge that he did not, or do you only mean that you did not personally know anything about it?

14. Please state how you know that neither Daniel B. nor Joseph Badger from 1820 to 1831 reported to your mother their doings as administrators as inquired of in the 9th district interrogatory. Were they, during said period, on friendly or unfriendly terms with your mother?

15. If you have answered that you were present at conversations as inquired of in the 10th, 11th, 13th, and 16th direct interrogatories, state the dates of each, giving the month and year, also the place where, and who was present. Do you undertake to swear to the language used in such conversation, and that you have stated all that was said?

16. How do you know that your mother did not read, or hear read, the paper or papers inquired of in the 10th and 11th direct interrogatories, before she signed them? Did you read or hear read said paper or papers?

17. If you did then read or hear read said paper or papers, state how you can identify the same.

18. Have you seen said papers or either of them, or copies of

them, or either of them, since, and of which and when, and where; and who showed them to you? How do you know that those you have since seen were the originals of true copies of the identical paper or papers which your mother signed without reading or hearing read?

19. Was not your mother a bright, active, intelligent woman in 1830 and 1831, or otherwise? When did she die, and at what age?

20. Have you not had furnished you, and if so, by whom, a printed copy of the defendant Badger's answer in this case, or have you seen, read, or had in your possession such copy?

21. Have you not read it or heard it read, or has not said answer, or the substance of it, been stated to you in order that you might think over and prepare your testimony in answer to the same?

22. Have you not testified in whole or in part from some memorandum? If so, who furnished it to you? If you prepared it, state when and at whose request, and how you happened to prepare the same. How did you know upon what points or subject you would be questioned in these interrogatories?

23. If, in answer to the 18th direct interrogatory, you say that the signature, "Ann Badger," is not in your mother's handwriting, then state in whose handwriting said signature is, or by whom made.

24. Were you on friendly terms with your brother Daniel
152 B.? When did you cease to be on friendly terms with him? When did you last visit or speak to him?

25. Have either of your brothers or sisters given their depositions yet in this case? If so, state which of them.

26. Have not they or some of them, or some one else, and who, stated to you in whole or in part what questions were put to them, or what testimony they had given or should give in their depositions?

27. Have you not seen or read, or heard read, some or all of these direct or cross-interrogatories before the same were put to you in their order by the commissioner? Has not the substance of them, or of some of them, been stated to you verbally or in writing; and if so, by whom and when?

28. Have you not seen, or read, or heard some or all of the direct or cross-interrogatories prepared or filed to take the deposition of your brothers and sisters, or of some of them, in this case? Has not the substance of them or of some of them been stated to you? If so, by whom and when?

29. Have you not seen, read, or heard read or stated, the depositions, or a part thereof, or the substance of the whole or of a part thereof given by your brothers and sisters in this case, or by some one or more of them, and which?

30. If, in answer to the 11th direct interrogatory, you say your mother's eyesight was not good, please state particularly when it was not, during what period, what was the trouble, how severe was it; did it prevent her from reading or from her usual avocations, and for how long? Did she have medical advice, and who was the doctor?

By E. MERWIN,
Solic'r of Respd't, E. B. Badger.

Answers of Eliza M. Smith, the witness named in the foregoing commission, to the several interrogatories and cross-interrogatories therein contained.

1. To the first she says—ans. My name is Eliza M. Smith; age, forty-seven years; residence, Jamaica Plain, West Roxbury, Massachusetts.

2. To the second she says—ans. I am. He is my brother.

3. To the third she says—ans. He was my oldest brother.

4. To the fourth she says—ans. I did. I resided with my mother during that period. My father died in 1819, and we then resided in Broad street. Soon after we moved to a house in Prince street, and we occupied another house in Prince street, and also one in 153 Fleet street, which first I do not now remember, for I was young then. Then in Sheafe street. We moved from there in the fall of 1827, to Lafayette avenue. We moved from there in May, 1829, I think, to a house in Hanover street, where we lived till May, 1830, when we moved to Myrtle street, and there we lived fifteen years.

5th. To the fifth she says: Daniel, my oldest brother, lived with us at first, but within a year after my father's death he married and went to housekeeping. Augustus Henry lived with us till about the year 1824; he then left home to reside with his master, and earned his board and clothes. David J. Badger, Ann J. Badger, Jacob Badger, lived at home till 1826 or thereabouts. Almira A. Badger, Alfred C. Badger, and Eliza M. Badger, and Mary H. B. Badger, and James W. Badger, all lived at home till 1831, inclusive. Jacob and David returned to my mother's house in 1828, and David lived there till after 1831. Jacob went to N. York in the summer of 1831.

6th. To the sixth she says: She did keep boarders most of the time. Ann took in sewing and taught school. Almira also taught school about two years. David J. was a successful merchant, and boarded at home, and was always ready to help the family, and did do so. Jacob paid his board from as early as I can recollect. When he returned in 1828 he paid his board. This I know of my personal knowledge, and I have heard my mother speak of his doing so before.

Ann J. was married in December, 1827, and went to housekeeping. Alfred C. went into a store and earned wages, about the winter or spring of 1828, which his mother received.

7th. To the seventh she says: I omitted to state in answer to the fifth interrogatory that I have often heard my mother say that David J. was subject to deranged fits in his early youth, the result of a fever. And to my personal knowledge he was decidedly crazy when he returned to my mother's house in the fall of 1828, about the first of October, and has been so ever since.

To my personal knowledge Daniel never rendered my mother any assistance; on the contrary, he was harsh to her and unmindful of her necessities.

He married in June, 1820, a poor girl. She was sickly and sub-

ject to fits. He was obliged to keep a grown woman with her all the time, and her family were dependent on them in some measure, and lived there a great deal. She had three children, and died of consumption in the summer of 1826. He always, or very often, said to me that he did no business of any consequence. He hired the shop in the house in Broad street of my mother, and he was always delinquent with his rent, and rarely paid it before the beginning of the next quarter. The rent was one hundred dollars a year. I have known him pay his rent in sums of five dollars and one dollar at a time.

At my mother's death he owed her about eighty dollars, which he refused to pay her, even on her dying bed. He never did
154 pay it. We asked him to pay it, in order to assist in the funeral expenses, but he declined.

8. To the eighth she says: In the fall of 1826 my mother's resources by boarders were cut off, and Ann was away teaching school. Almira was away for the winter. There were the four youngest children at home, and she was very much straightened, and she felt obliged to stop her meat bill, and charged her grocery bill to Robert Badger, her nephew, (which bill I understood was paid by David J.) We had no meat to my personal knowledge for several meals after November, 1826. She kept a very small fire on her parlor hearth and baked her cakes there. A fire was very rarely made in the kitchen. I went and begged meat for my mother from my relations, and my sister did the same. This was a winter of destitution. She had no boarders, and her children who paid board were away. During the winter I went repeatedly to Daniel on behalf of my mother, for money. Once or twice he gave me a quarter of a dollar, or some small piece of money. He usually asked me "why I came to him; he had no money." My mother had to sell pieces of her furniture. She had barrels sawed in two for wash-tubs, and she cut up her own clothes for the children to be able to go out.

In October, 1828, (about the time I received two medals at the city school,) I saw my mother show him a note and ask him if he couldn't pay it, or something on it. He replied that he could not; he had no money. I have heard my mother say that this note he gave her shortly after father's death, for money she lent him. She then told him to renew the note, and he did so. I saw it done. I often after that have heard my mother ask him for some money on that note, and have done so myself, but he always replied that he had no money, and finally he refused to acknowledge that he owed her any money at all.

9. To the ninth she says: To my knowledge he never reported to her his doings as administrator. He never consulted with her. I should have known of it from the year 1826 if he had. He was not in the habit of visiting the house. He never came on social visits. After the year 1831 his visits were rarer than ever—not more than once in several years.

I never knew Joseph Badger to say a word about the property to

my mother, and don't think he ever did. He never appeared to take any interest in the property.

10th. To the tenth she says: The only time I remember distinctly was in the spring of 1830. It was in the first week in April, on a Monday. It was washing day, and it was just about the time of change in the public schools from 9 to 8 in the morning. Daniel came in the outer hall door and entered the kitchen door. This was in the Hanover street house. He said hurriedly: "Mother, here's a paper I want you to put your name to as quick as you can. It has got to be in court at nine o'clock, and it's most that now." She left her tub, wiped her hands, and took the paper. She said, "What is it for?" He was reluctant to tell, and said, "It's all right; I am in a hurry." He said again, "It is to pay some real estate to finish paying father's debts." I stood beside my mother and said, "Daniel's in a hurry, mother; why dont you be quick?" She remonstrated, and said she thought he had already sold enough to pay the debts. She was reluctant to sign. She said she was not willing to sign any more papers without consulting a lawyer. He replied again that it was all right, and that she might consult Lawyer Dame. (Lawyer Dame, we afterwards learned, was his own lawyer.)

She took it and went up stairs, and a young man that came with Daniel went up with her. In a few minutes I heard strong and loud language up stairs, and I went up. Daniel said to Almira, "You had better be careful, Miss. There is a young man listening to all you say." She was remonstrating against her mother's signing the paper. My mother did not sign the paper down stairs, and I did not see her sign it up stairs, and he went away very angry. She did not read the paper. Her eyesight would not admit of her doing so, and I never knew her to read anything but a large quarto Bible. We always had to thread her needles for her.

11. To the eleventh she says: I have answered this question. The paper was not read to her.

12. To the twelfth she says: I have heard him. Once in particular in the house in Myrtle street. He was talking with Almira. Always after she objected to having that paper signed he was very venomous towards her. He said to her that he was his father's oldest son, and that he had a right to have the property, and meant to have it, and that he would see Almira lying in the gutter without assisting her.

13. To the thirteenth she says: I have often heard her remonstrate with him about his conduct as administrator, and also about him. She often used the phrase "abominable proceedings" to him. She frequently said that it was only her straitened circumstances that prevented her employing a lawyer to investigate his doings.

14. To the fourteenth she says: I knew that the house in North Federal court was to be sold, and that my mother employed Adin Hall to buy it for her. This was done in February, 1831.

About that time, or shortly afterwards, Daniel came to my mother's, and I heard her ask him to help her in raising the money to pay for

it, and she told him that Adin Hall was her agent. He declined to do so.

My mother afterwards got a party who was ready to advance the money, when she heard that the house had been sold again. Daniel came to the house shortly after, and she said, "Can it be possible, Daniel, that you have sold that house over again?" He replied that it was of no use waiting for her to raise the money, and he had to close up the estate.

15. To the fifteenth she says: She told him that she had been told by her sister, who lived opposite the North Federal court house, that she saw three men (in March, 1831,) get into the window; that one of them had an auctioneer's flag, which he stuck out, and one was Daniel Badger. He replied that he did resell it; that he wanted to close the estate, and couldn't wait for her, and that it was no use for her trying to get the money to pay for it.

156

16. To the sixteenth she says: I remember distinctly in the spring of 1826, at the close of that winter of destitution, of which I have spoken, Daniel called one morning and stood by the table in the sitting room. Mother and I both stood also, and the call was a short one.

He told her he had come down to see her about her dower being set off. He said that the Broad street house and the North Federal court house would come the nearest to her proportion of the estate for dower. Mother said, "I wish I could have had a house to have lived in." She did not willingly assent to the assignment of dower he proposed, and she said she wished she could have had the Lynde street house. What she said was, "I ought to have had the Lynde street house." She was reluctant to take the dower he proposed, and wanted a house that could be her home. Daniel then proposed that she should select Robert S. Badger, her nephew, to make partition of dower on her behalf, and I recollect when he called to see my mother about it. He acted as such.

17th. To the seventeenth she says: As far I have always known and understood, Daniel managed the real estate and collected the rents. I never knew of my mother's receiving any of such rents. I heard Daniel say that the Broad street estate rented for three hundred and sixty dollars a year, besides the one hundred dollars a year paid by Daniel for the store. The North Federal court house rented for one hundred and eighty dollars a year.

To the eighteenth she says: I was familiar with my mother's handwriting, and know her signature well. I have seen the original petition referred to in the interrogatory. The signature thereto—Ann Badger—is not in the handwriting of my mother, and does not resemble the other signatures of her in the probate office. I annex a copy of the petition above mentioned, marked A., C. C. P., jr., by the commissioner.

19. To the nineteenth she says: I can add that my mother often told me that she never signed away the property of her children, whatever Daniel might allege had become of it. I wish to add, also,

that in 1828 or '9, when her tenant left the house in Broad street, we often shared one biscuit among five, for a meal.

And in reply to the cross-interrogatories contained in the said commission she replies as follows, viz :

Cross 1. To the first she says : I was forty-seven the 28th day of last October.

2d cross. To the second she says : I was.

157 Cross 3. To the third she says : We do not expect to receive any portion, because whatever is recovered will be the property of James W. Badger.

Cross 4. To the fourth cross-int. she says : I sold out to my brother James, and he settled with me for it. All the others sold out also. I knew at the time that by selling out I could become a witness, but I did not know whether James intended to prosecute the matter any further. There was no agreement made with James about distributing the proceeds of this suit, and no understanding that he was to distribute them. I have no reason to expect to receive any portion of the same, though I should not be surprised if I were to. I wish to state that I never had any wish to go to law about the matter at all, and that is the reason why I was willing to sell my interest to my brother. Not because I did not think we had a just cause, but because I had an aversion to having the matter brought before the public.

Cross 5. To the fifth she says : I paid very little attention to this matter, and couldn't say whether I signed any deed or paper or not. I cared little at the time what dispostiion was made of the case, and acceded to any proposal that was made. My brother James requested me to do it. He gave me a note. I have no recollection of having given any receipt. There was no agreement one way or the other about paying anything back. I took the note and thought no more about it.

Cross 6. To the sixth she says : It was disposed of in some way that I do not understand, by the lawyers. I think it was dropped.

Cross 7. To the seventh she says : I am wholly unable to answer this question. I don't know of any agreement to dismiss it. It was done by the lawyers.

Cross 8. To the eighth she says : I never paid any part of the costs of that suit, and never expect to. My husband did not pay any part of such costs to my knowledge. If I understand it correctly, Augustus H. Badger and James W. Badger carried on the former suit, and employed counsel. James W. Badger, so far as I understand, employs the counsel and carries on the present suit. I don't know who is to share, if anybody, in the proceeds of this suit. I take little interest in the matter. I have not corresponded or conversed with James about it since the beginning, but have been in his company.

Cross 9. To the ninth she says : I have already fully answered this question, and can only add that no such agreement or understanding exists.

Cross 10. To the tenth she says : It will not be to the pecuniary

loss of either myself or my husband. I have endeavored to answer the preceding questions truthfully, and will add that if James should recover and offer to give me any portion, I should not refuse it. He is under no obligation to do so, and I do not expect it of him.

Cross 11. To the eleventh she says: I have fully explained this matter in the answer to the preceding interrogatories.

158 Cross 12. To the twelfth she says: Her son boarded with her and paid board to my personal knowledge. There were some gentlemen named Barker boarded with us in Prince street, in the "Suter house." The teacher of my school and his wife boarded with us in 1824. This I recollect from presents he gave me. I can't say how long. They may have staid there two or three years. I was too young to recollect such details, but I was old enough to know what was going on and to remember distinctly. After the year 1826 she had no boarders, except her sons and Almira, who earned money by teaching school, and Alfred C., who earned some money; and my mother had both their earnings. My mother kept no servants. I recollect only two, and they were there only for a short time each. After 1831 she had boarders again at various times.

13th cross. To the thirteenth she says: I think I have fully answered this interrogatory. I recollect carrying the tax bill of the house in Sheafe street, amounting to nine dollars, to Daniel, and asking him to pay it. It was in 1827, and he refused to have anything to do with it. He constantly refused in my hearing to give her any assistance. It was constant grasping and refusing. I speak of my personal knowledge. David J. used to supply us with things when we wanted them.

Cross 14. To the fourteenth she says: I should have known if Joseph Badger had done anything about it. I can positively state that I should have known if anything had been reported by Daniel, for I was in constant communication with my mother, and we all knew everything that was going on. Joseph did not even come when the dower was set off.

Cross 15. To the fifteenth she says: I have given the dates as near as I can of such conversations, and have endeavored to give the words as nearly as possible, as well as so much of the conversations as I can.

Cross 16. To the sixteenth she says: He did not read them to anybody. He was in a great hurry, and said he must have them instantly. My mother was not able to read it. When they went up stairs, I followed them up to the top of the stairs, because I heard an altercation and great noise there. I stood outside the door. He was in an intense rage with my mother, and with Almira, and I recollect it very well, for I was sixteen years old, and it was an unusual circumstance. I recollect hearing Daniel afterwards tell Almira that if it wasn't for her he could get along with mother better, and manage the estate easier. I did not read the paper, and it was not read. Daniel said, "It's all right." This he said when my mother showed reluctance to sign it.

Cross 17. To the seventeenth she says: I did not hear it read, or

read it. I have not identified any paper, but there was no other brought to her about that date.

Cross 18. To the eighteenth he says: I have seen an orignal paper in the court, of which I have annexed a copy. I have not said that that was the identical paper which my mother refused to sign, nor that the paper annexed is a copy of the same.

159 Cross 19. To the nineteenth she says: She was a bright, active and intelligent woman in 1830 and 1831. Her eyesight was not good, and when any bill or paper was brought in she always would call to one of us to read it. She afterwards was treated by Dr. Dix, for her eyes.

She died in 1855, I think. She was seventy-four years of age.

Cross 20. To the twentieth she says: I have read a printed copy of the defendant's answer. My husband brought it home to me. I can't say how he got it, and have given it very little attention.

Cross 21. To the twenty-first she says: I read it as I would any pamphlet that came into the house, when it was brought home, but I have not read it with a view to prepare my evidence. It was a good while ago, and I cannot say where it is now.

Cross 22. To the twenty-second she says: I have not testified at all from any memorandum. I have testified wholly from my memory, which is entirely distinct. In fact the facts are too deeply impressed into my soul to be ever forgotten.

Cross 23. To the twenty-third she says: That I cannot say.

Cross 24. To the twenty-fourth she says: From the year 1826 I was always afraid and suspicious of him. I was on friendly terms with his daughters.

Cross 25. To the twenty-fifth she says: They are all in New York, and I do not know if they have. I understood that they were to do so, yesterday, in New York.

Cross 26. To the twenty-sixth she says: No one has so stated.

Cross 27. To the twenty-seventh she says: I have not heard or seen any of these interrogatories before they were put to me, and nothing has been stated to me concerning them or their substance.

Cross 28. To the twenty-eighth she says: To this I answer, no, to all parts. The subject is almost a forbidden one among us sisters and brothers, it is so disagreeable and painful.

Cross 29. To the twenty-ninth she says: I have not.

Cross 30. To the thirtieth she says: She first had Dr. Ware and then Dr. Dix. She never could thread a needle within my recollection. We always did that for her. She could only do coarse sewing. Afterwards she had a severe inflammation of the eyes. It appeared to be the culmination of long trouble, and she was operated on by Dr. Dix. Dr. Ingalls and Dr. Snow were the family physicians, and Dr. Ware passed her over to an oculist, Dr. Dix. She never undertook to read anything except a large Bible. We read to her.

ELIZA M. BADGER SMITH.

I, Charles P. Curtis, jr., a commissioner of the United States circuit court, Massachusetts district, hereby certify that by virtue of

the foregoing commission, I caused to appear before me, on the 17th and 18th days of July, 1861, at Boston, Eliza M. Smith, the witness therein named, and having first duly cautioned and sworn said
160 witness to speak the whole truth, I took her answers to the several interrogatories and cross-interrogatories in said commission contained, and she signed the same in my presence. And in all particulars I obeyed the directions in said commission set forth.

In witness whereof, I hereto set my hand this eighteenth day of July, 1861, at Boston.

CHARLES P. CURTIS, JR.,
U. S. Com'r to take affidavits and bail.

EXHIBIT A. C. P. C., JR.

To the Hon. the justices of the supreme judicial court begun and held at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March, A. D. 1830.

Humbly shows Joseph Badger and Daniel B. Badger, of said Boston, as they are administrators of the estate of Daniel Badger, late of said Boston, gentleman, deceased, intestate, that the just debts which the intestate owed at the time of his death which now remain unpaid, together with the money advanced for the payment of his just debts, and the charges of administration as settled and allowed by the judge of probate at a court held by him at said Boston, on Monday, the seventeenth day of September, A. D. 1827, amount to the sum of four thousand six hundred and seventy-six dollars and thirty-three cents. That there is no personal estate wherewith to discharge the same, and that the real estate undisposed of under a former order of sale was of the value of eight thousand eight hundred dollars according to the appraisement in the inventory; but a part thereof is subject to the widow's dower.

And your petitioners further show that heretofore, at a probate court held at Boston on the 9th day of October, A. D. 1820, they presented a list of debts due from the intestate and obtained license the thirteenth day of November thereafter to sell the real estate for the payment thereof, which was partly executed, to wit, at a probate court held at said Boston, on Monday the fifteenth day of October, A. D. 1827, upon their application (part of the debts contained in said list remaining still unpaid) license was granted to them to sell so much of the real estate of the deceased—where the same could be best spared—as would raise the aforesaid sum of four thousand six hundred and seventy-six dollars and thirty-three cents, and thirty dollars more for incidental charges: That your petitioners refrained from exercising the entire power granted by said first license, and the authority granted to them by said second license at the solicitation of some of the heirs and the guardians of others—in the belief that the real estate was depressed below its true value—and that there would be a change restoring this nearer to the value according to the original appraisement than it then was, but no beneficial

161 alteration has taken place in this respect, and the year in which the said license might have been respectively executed has expired.

Wherefore your petitioners pray for a renewal of said license and that they may now be empowered to sell so much of said real estate of the deceased as will enable them to pay said debts—money advanced, charges of administration and charges of sale—and as in duty bound, &c.

JOSEPH BADGER,
DANIEL B. BADGER, *Admr's.*

We, the undersigned, children and heirs-at-law of Daniel Badger, deceased, acknowledge to have received due notice of this petition—and certify that we have no objection to the granting thereof.

DANIEL B. BADGER,
For self and as owner of share of David J. Badger.
JACOB BADGER,
For self and as guardian of A. H. Badger.
ALMIRA A. BADGER,
As guardian for children, Eliza M., Alfred C., Mary H. B. and James W. Badger, and as widow of said deceased.
ANN BADGER.

162 UNITED STATES OF AMERICA.
Massachusetts District, ss:

[L. S.] The circuit court of the United States, within and for the Massachusetts District.

To the Hon. Edward E. Bourne, of Kennebunk, in the State of Maine, Judge of the Court of Probate, &c.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers (to the interrogatories hereunto annexed) of Daniel Gilpatrick, of said Kennebunk, a witness to be examined on behalf of the plaintiff, and to be used in a certain cause now pending in said court, wherein Augustus H. Badger and al., Plaintiff, vs. Daniel B. Badger and al., defendant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimeny whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-first day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition,
163 either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District, ss:

A. H. BADGER *et al.* }
vs. } In equity. October term, 1857.
DANIEL B. BADGER *et al.* }

Interrogatories to be propounded to Daniel Gilpatrick, of Kennebunk, in the State of Maine, a witness to be examined on behalf of the plaintiffs.

1. What is your name, age, residence, and present and former occupation?

2. Please state whether or no you have ever resided in the city of Boston, commonwealth of Massachusetts; and if yea, during what period or periods?

3. Please state whether or no, in or about the year 1831, you bid off, at public auction, any real estate situated in said Boston, and belonging to the estate of one Daniel Badger, then deceased; and if yea, please state the date as nearly as you have the means of so doing; the number of parcels of such real estate, so bid off by you, and whether or no any deed or deeds of the same were made to you, and if yea, by whom?

4. If any deed or deeds were so made to you, please state whether or no they are now in your possession; and if not, what disposition you have made of them, or what has become of them to the best of your knowledge and recollection?

164 5. If you shall have stated that such deed or deeds are now in your possession, please annex the same; and if you shall have stated that the same are not now in your possession, please

examine the Exhibit hereunto annexed, marked A; and state, to the best of your knowledge and recollection, whether or no the real estate therein described was so bid off by you, as inquired in the 3d interrogatory?

6. If you shall have stated that real estate was so bid off, as enquired in the 3d interrogatory, please state whether or no it was so bid off by you, for your own use and benefit, or whether you were employed by some other person or persons to bid off the same for his or their use and benefit. If yea, by whom?

7. If you shall have stated that you bid off the real estate as enquired in the 3d interrogatory, please state whether or no you afterwards conveyed the same to any person. If so, to whom and at what time?

8. If you did so convey real estate as enquired of in the preceding interrogatory, please examine the Exhibit hereto annexed, and marked B; and state, to the best of your knowledge and recollection, whether or no the real estate therein described was so conveyed by you?

9. If you shall have stated that you did so convey any real estate bid off by you, as enquired by the 7th interrogatory, state whether or no you so conveyed it, pursuant to any agreement or understanding existing at the time when you so bid it off. If yea, what?

10. State whether or no anything was paid to you on consideration of said conveyance. If yea, state what, when, and how it was paid?

11. What was your business at the time of said sale at auction, and by whom and how were you employed?

JAS. B. ROBB,
Plaintiff's Solicitor.

Exhibit A.

[*Badger's administrators to Gillpatrick.*

Know all men by these presents, that we, Joseph Badger, pump and block maker, and Daniel B. Badger, trader, both of Boston, in the county of Suffolk and commonwealth of Massachusetts, administrators of the estate of Daniel Badger, late of said Boston, gentleman, deceased, intestate, by an order of the supreme judicial court, begun and holden at Boston, in and for said county of Suffolk and Nantucket, on the first Tuesday of March, in the year of our Lord one thousand eight hundred and thirty, was licensed and duly empowered to sell and pass deeds to convey so much of the real estate of the said deceased as would raise the sum of four thousand six hundred and seventy-six dollars and thirty-three cents, and
165 fifty dollars more for the incidental charges; and whereas we, the said Joseph and Daniel B. Badger having given public notice of the intended sale, by printing notifications thereof, aggreeably to the direction of the said court, three weeks successively, in the newspaper called the Boston Daily Advertiser, printed in said Boston, agreeably to the order and direction of said court; and having first taken the oath by law in such cases required, did on the twelfth day of

March instant, eighteen hundred and thirty-one, pursuant to the license and notice aforesaid, sell at public vendue the whole of the following described real estate, being a certain part of the real estate of said Daniel Badger, deceased, hereinafter described, to Daniel Gillpatrick, of said Boston, blacksmith, reserving to the widow of said Daniel Badger, deceased, her right of dower to all the said premises hereafter described, during her life, for the sum of one hundred and fifty dollars, he being the highest bidder therefor, as follows, to wit:

A certain dwelling-house and land, bounded northerly on the Mill creek, there measuring fourteen feet six inches; northwesterly on land now or formerly owned by John Harvey, there measuring thirty-four feet; southwesterly on Link Alley, so called, there measuring thirty-six feet ten inches; southeasterly on land now or late owned by David Jones, there measuring thirty-six feet six inches, with a privilege of passing to and from the necessary at the bottom of the yard; be all the measurements more or less, with a privelledge to the adjoining house of passing through the back entry, and all the privelledges hereby granted to said Daniel Gillpatrick, to all former deeds as well as deeds recorded to said Daniel, deceased, being Lib. 185, fol. 151; also deed recorded Lib. 186, fol. 53; also Lib. 205, fol. 283; also Lib. 185, fol. 147. Hereby meaning to convey all the right and title that Daniel Badger, deceased, had to said estate, reserving to the widow, Ann Badger, being now the widow of Daniel Badger, deceased, full possession in said premises, as the same has been assigned and set off to Ann Badger, widow of said Daniel, deceased, as and for her dower, as recorded in probate office, in the city of Boston, and passed the sanction of the judge of said court, on Monday, the twenty-third day of April, eighteen hundred and twenty-seven. Therefore, know ye, that we, the said Joseph and Daniel B., as aforesaid, by virtue of the power and authority in us vested as aforesaid, and in consideration of the aforesaid sum of one hundred and fifty dollars to us paid by the said Daniel Gillpatrick, the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto him, the said Daniel Gillpatrick, and to his heirs and assigns forever, all the estate and premises herein above mentioned and described, or howsoever the same is reputed to be bounded or described. To have and to hold the aforegranted premises, with all the privileges and appurtenances to the same, belonging to him, the said Daniel Gillpatrick and to his heirs and assigns forever, to his and their use and behoof forever. And we, the said Joseph and Daniel B.,
166 in our capacity as aforesaid, do hereby covenant with the said Daniel Gillpatrick, his heirs and assigns, that we *was* lawfully authorized and empowered to make sale of the same as aforesaid; that we gave, as aforesaid, public notice of the said intended sale as aforesaid; that we took the oath by law required previous to said sale; that it was necessary the same should be sold for the purposes aforesaid; that the premises were struck off to the said Daniel Gillpatrick for the sum aforesaid, at a public vendue as aforesaid, and that he, the said Daniel Gillpatrick, offered most for the same.

In witness whereof, we, the said Joseph and Daniel B., as afore-

said, have hereunto set our hands and seals this eighteenth day of March, in the year of our Lord one thousand eight hundred and thirty-one.

JOSEPH BADGER. [L. S.]
DANIEL B. BADGER. [L. S.]

Signed, sealed and delivered, in presence of us, word "printing" interlined before signing—
PHILO F. PACKARD,
ROBERT RAY.

SUFFOLK, *ss.*, *March 21st*, 1831.

Then the above-named Joseph Badger and Daniel B. Badger personally acknowledged the above instrument by them subscribed to be their voluntary act and deed. Before me,
DARIUS BOARDMAN,
Justice of the Peace.

MARCH 29TH, 1831, *at five o'clock p. m.*
Received, entered with Suffolk deeds, Lib. 351, fol. 237.
P'r HENRY ALLINE, *Reg'r.*

A true copy from the records of deeds for Suffolk county, lib. 351, fol. 237.
Attest: HENRY ALLINE, *Reg.*

167 Exhibit B.

Gillpatrick to Badger.

Know all men by these presents that I, Daniel Gillpatrick, of Boston, in the county of Suffolk and commonwealth of Massachusetts, in consideration of one hundred and seventy dollars to me paid by Daniel B. Badger, of Boston, in the county and commonwealth aforesaid, trader, the receipt whereof is hereby acknowledged, do by these presents grant, remise, release, and forever quitclaim unto the said Daniel B. Badger, and to his heirs and assigns, all my right, title, interest, and estate in and to the following described real estate, to wit: a certain dwelling-house and land, bounded northerly on the Mill creek, there measuring fourteen feet six inches; northwesterly on land now or formerly owned by John Harvey, there measuring thirty-four feet; southwesterly on Link alley, so called, there measuring fourteen feet ten inches; southeastly on land now or late owned by David Jones, there measuring thirty-six feet six inches, with a privilege of passing to and from the necessary at the bottom of the yard. Be all the measurements more or less, with all the privileges and rights more particularly named in deed of Joseph and Daniel B. Badger, administrators on late Daniel Badger's estate, deceased, for which a more particular description reference will be had to their deed to me.

To have and to hold the above released premises to him, the said Daniel B. Badger, and to his heirs and assigns, to his and their use and behoof forever; so that neither I, the said Daniel Gillpatrick, nor my heirs, or any other person or persons claiming by, from, or under me or them, or in the name, right, or stead of me or them, shall or will by any way or means have, claim, or demand any right or title to the above released premises, or to any part or parcel thereof, forever. In witness whereof, I, the said Daniel Gillpatrick, have hereunto set my hand and seal this twenty-eighth day of March, in the year of our Lord eighteen hundred and thirty-one.

DANIEL GILLPATRICK. [L. S.]

Signed, sealed, and delivered in presence of us—
WM. P. HART.
DANIEL B. BADGER.

SUFFOLK, *ss*, *March 29th*, *A. D.* 1831.

Then personally appeared the above-named Daniel Gillpatrick, and acknowledged the above instrument to be his free act and deed.

Before me, JOHN JOHNSON,
Justice of the Peace.

168 May 5th, 1834, at 50 minutes past 10 a m.
Received, entered, and examined,
P'r HENRY ALLINE, *Reg.*

A true copy from the records of deeds for Suffolk, lib. 378, fol. 143. Attest:

HENRY ALLINE, *Reg.*

Circuit court of the United States.

DISTRICT OF MASSACHUSETTS, *ss*,

A. H. BADGER *& al.*
vs.
DANIEL B. BADGER *& al.*
} October term, 1857.

Cross-interrogatories to Daniel Gillpatrick.

The respondent, Daniel B. Badger, objects to the 9th interrogatory, so far as it calls upon the deponent to state his "*understanding*," and objects to any evidence of such understanding, and puts the following cross-interrogatories, *de bene esse*, to said Daniel Gillpatrick:

I. Did you not purchase the real estate inquired of in the direct interrogatories at public auction, and were you not the highest bidder therefor?

II. Was not said auction sale, so far as you know or had any reason to believe, conducted properly and in good faith? Did not the auctioneer, so far as you knew or could judge, endeavor to get the highest bid possible for the property? Was there any secret under-

standing between you and the auctioneer that he was to knock down the estate to you? Did the auctioneer know that you intended to bid before you did bid?

III. Was not the price paid at said auction sale a fair price for the estate with the encumbrance of the widow's dower thereon, and so considered at the time?

IV. Was there any agreement or obligation between you and the administrators of said Daniel Badger, or either of them, by which you were to purchase in said estate for the benefit of them or of either of them? If you swear that there was, state with whom, when and where it was made, and the terms thereof state particularly.

169 V. Did you not purchase said estate under the expectation that you might be able to sell the same to the said Daniel B. Badger at a small advance, and thus make a fair profit, and was not this expectation founded solely on your knowledge of the parties, the situation of the property, and the supposition that the said Daniel B. would desire to become the owner of the property, and not upon any agreement made with either of said administrators previous to the auction sale?

VI. Did you afterwards convey said estate to said Daniel B. Badger in pursuance of any obligation or agreement made with him before your purchase at said auction sale, or did you convey to him voluntarily, and because said Badger was desirous to procure the same, and because you had purchased the same in the hope of making sale thereof at a small profit?

VII. So far as you know, was there any attempt or desire to conceal your conveyance to said Daniel B. from the family of the said Daniel, or from any one else?

VIII. Was the Mr. Badger of the firm of Badger and Hart in any way related to the respondent? If so, how? What were your circumstances in 1830 and 1831?

(Signed) E. MERWIN, *Att'y for Badger.*

The plaintiffs object to the 1, 2, and 3 cross-interrogatories.

J. B. ROBB, *Pl'ff's Solicitor.*

Daniel Gillpatrick, the witness named in the foregoing commission, on oath, makes answer to the interrogatories set forth in the said commission as follows:

To the first interrogatory of the plaintiff he answers. My name is Daniel Gillpatrick; my age fifty-three. I reside in Kennebunk, in the State of Maine. I am now, and have been during my majority, a blacksmith.

To the second interrogatory of the plaintiff he answers. I resided in said city of Boston in 1830 and 1831, about two years, I think.

To the third interrogatory of the plaintiff he answers. When in said Boston in 1831, I did bid off at auction certain real estate situated in said Boston, belonging to the estate of said Daniel Badger, deceased. The deed to me by the administrators will state the date and also the

description of the estate so purchased by me. But one lot was set forth in the deed, being that on which the house stood. The deed was made to me by Joseph Badger and Daniel B. Badger, administrators.

To the fourth interrogatory of the plaintiff he answers. The deed of said administrators is now in my possession.

To the fifth interrogatory of the plaintiff he answers. The copy annexed, marked A, is a true copy of the deed aforesaid, and the land therein described is the same deeded to me, as being purchased at said auction.

170 To the sixth interrogatory of the plaintiff he answers. The estate described in said deed was bid off under the following circumstances: I was requested by Daniel B. Badger to attend the auction and bid on the lot. I did so attend, and the lot was struck off to me. I bid it off with the expectation of conveying it back to Daniel B. Badger. I did not want the lot myself, but bid with the understanding that he was to take it of me. That was the agreement. I was asked to go, but received no pay for my time or services at the auction. This was the only way in which I was employed.

To the seventh interrogatory of the plaintiff he answers. I did afterwards convey the same estate bid off by me, and described in the deed aforesaid, to said Daniel B. Badger, as will appear by my deed to him. The deed of said Badger to me was made March 18, 1831, and my deed to him soon afterwards. I do not remember exactly the date.

To the eighth interrogatory of the plaintiff he answers. As well as I can recollect, the real estate described in the exhibit marked B, is the same which was conveyed by me, excepting that in the line marked C. I should think that *fourteen* should have been written *thirty-six*.

To the ninth interrogatory of the plaintiff he answers. I did so reconvey according to an understanding or agreement, as before mentioned.

To the tenth interrogatory of the plaintiff he answers. Nothing was paid me in consideration of said conveyance.

To the eleventh interrogatory of the plaintiff he answers. I was a blacksmith, and employed by Daniel D. Badger and William P. Hart, blacksmiths.

To the first cross-interrogatory he answers. I did purchase the same at public auction, and was the highest bidder therefor.

To the second cross-interrogatory he answers. It was conducted properly and in good faith, so far as I know. The auctioneer, I suppose, did endeavor to get the highest bid for the property. There was no understanding at all between me and the auctioneer. I never spoke to him. I did not know whether he had any knowledge that I was to bid or not.

To the third cross-interrogatory he answers. As far as I knew, it was considered so. I do not remember whether anything was said about it or not.

To the fourth cross-interrogatory he answers. I can only say I was

asked to go and bid, and did do so. I did not go to buy on my own account. Daniel B. Badger came to the shop where I was at work and asked me to go and bid, and agreed to take it off my hands, if it was struck off to me. He paid me nothing for attending the auction. So long time has elapsed I cannot remember the precise conversation.

To the fifth cross-interrogatory he answers. I purchased the
171 estate in the manner already mentioned. I had no expectation of profit or loss about it.

To the sixth cross-interrogatory he answers: I do not remember the conversation, but I conveyed to Daniel B. Badger, according to the agreement, whatever it was. The details of the agreement are not now in my mind, further than before stated. I cannot remember who went up with me to the auction. Whatever agreement there was, was made before the sale. I conveyed to Daniel B. Badger voluntarily, without any previous expectation or hope of profit.

To the seventh cross-interrogatory he answers: I did not know of any such attempt, or wish to keep secret from the family of said Daniel, or any one else, my conveyance to said Daniel B. Badger. I supposed everything was fair and honest.

To the eighth cross-interrogatory he answers: Badger, of the firm of Badger & Hart, was not related to Daniel B. Badger, that I know of. In 1830 and 1831, I was in business with my brother in Kennebunk, and owned the dwelling-house in which we then and now live.

DANIEL GILLPATRICK.

STATE OF MAINE. *York, ss.*

Pursuant to the foregoing commission, as hereunto annexed, I caused the afore-named Daniel Gillpatrick, to come before me on the thirtieth day of April, 1858, appointed for that purpose, and while thus present, I carefully examined him on oath touching the premises, putting to him the several interrogatories in the order set forth therein, and reduced his answers to writing, and he subscribed the same in my presence. This deposition being taken in all respects in conformity with the directions of said commission. Witness my hand the day and year aforesaid.

EDWARD E. BOURNE.

172 The respondents object to the filing and reading of the following deposition of William P. Hart, as not taken in this case, and because it was not taken in conformity to law, nor properly certified.

The deposition of William P. Hart, of Massillon, in the State of Ohio, a witness, resident in said Massillon, produced, sworn and examined on behalf of plaintiffs in the suit now pending in the circuit court of the United States at Boston, within and for the first circuit district of Massachusetts, in which A. H. Badger, Jas. W. Badger, Almira A. Badger, B. P. Sturgis, and Mary H. B., his wife, Moses M. Smith and Eliza M., his wife, Alfred C. Badger, Jacob Badger, and David J. Badger, are plaintiffs; and David B. Badger, S. D. Parker, are defendants.

Interrogatory 1st. What is your name, age, residence and occupation?

Answer. William P. Hart; fifty-third year; Massillon is my residence; occupation, a manufacturer.

Interrogatory 2d. Do you know the parties to this suit, or either of them. If yea, which of them, and how long have you known them?

Answer. I think I know Jacob Badger and Alfred Badger; I do know Daniel B. Badger.

Interrogatory 3d. How long have you known Daniel B. Badger.

Answer. I have known him ever since eighteen hundred and twenty-seven, and I think before that.

Interrogatory 4. Were you ever related to him by marriage or otherwise. If so, how?

Answer. He married a cousin of mine.

Interrogatory 5. Where did you reside in the years eighteen hundred and thirty, and thirty-one, and what was your occupation then and there?

Answer. I don't know for sure, I think it was in Boston—I am sure it was in Boston. I was in the blacksmith business.

Interrogatory 6. Did you carry on business alone, or with another person. If yea, with whom?

Answer. I carried on business with Daniel B. Badger and a man by the name of Davis, a part of the time, I think; before I came away I was in business with Daniel B. Badger alone the latter part of the time.

Interrogatory 7. When did you come away, and where did you go to when you came from Boston?

Answer. It is my impression, but will not be positive, but it was after eighteen hundred thirty, thirty-one, two or three—cannot state; I resided at Buffalo first, and came to Akron, Ohio, and from there to Massillon, where I have resided ever since.

Interrogatory 8. Where was your place of business in Boston?

Answer. I think it was on Cross street.

173 Interrogatory 9. State whether or no you were present at an auction sale of the property belonging to the estate of the late Daniel Badger, in the year eighteen hundred and thirty, known as the Distil-house square property?

Answer. I was.

Interrogatory 10. Did you attend said sale at the request of any person? If yea, at whose request?

Answer. My own. I have no recollection that any body requested me to go there to buy the property for any body.

Interrogatory 11. State whether or no Daniel B. Badger told you it was to be sold.

Answer. I don't recollect.

Interrogatory 12. What time of the day did the sale take place?

Answer. I could not say positive. I think it was in the middle of the day, to the best of my recollection.

Interrogatory 13. What was the state of the weather?

Answer. Do not remember.

Interrogatory 14. How long were you there?

Answer. Cannot say; might have been one, two, or three hours.

Interrogatory 15. Did the sale take place outside or inside of the building?

Answer. Do not recollect particularly; there was a hall running through the house or the stair-way three or four feet wide. I think the sale took place there.

Interrogatory 16. Who was the auctioneer?

Answer. I have some faint recollection of the name of Hersey.

Interrogatory 17. Can you state the name of any person present at the sale?

Answer. No; I don't know, but Daniel B. Badger might have been there; very possibly was. I think it quite likely he would have been.

Interrogatory 18. Who bid off the property?

Answer. I did; I think I did.

Interrogatory 19. How many rooms were there in the building?

Answer. I forget how many there were.

Interrogatory 20. Did you go into the upper part of the house on the day of sale?

Answer. My impression is that I did.

Interrogatory 21. Was the house occupied then?

Answer. I think it was; my impression it was, but still it might not have been.

Interrogatory 22. Was it occupied just before the sale; and if yea, how long before?

Answer. My impression it was, but I do not know about that; indeed, I could not answer the question.

Interrogatory 23. Describe the upper part of the house, the number of rooms, &c.?

Answer. I do not recollect; I cannot describe it.

174 Interrogatory 24. Was the house occupied after the sale? If yea, by whom?

Answer. I don't recollect; cannot state.

Interrogatory 25. Did you receive a deed for the house from the administrators? If yea, how long after the sale?

Answer. I received a deed, but I don't know how long it was. I think it was soon after, but could not state the time.

Interrogatory 26. State whether or no you took the deed to the register's office.

Answer. I don't recollect about that particularly.

Interrogatory 27. Where is the deed now?

Answer. I don't know where it is.

Interrogatory 28. When did you last see it?

Answer. I could not tell you; I cannot answer the question; do not recollect.

Interrogatory 29. Can you name the tenants that occupied the house after the sale, at any time, or any of them?

Answer. No, sir.

Interrogatory 30. What disposition did you make of the property?

Answer. I sold it.

Interrogatory 31. State whether or no you conveyed it to any one, and to whom?

Answer. I deeded it to Daniel B. Badger.

Interrogatory 32. How long after you received a deed from the administrators?

Answer. I could not tell how long it was; it was soon after; it was not long after, at any rate.

Interrogatory 33. How much money did you pay the administrators for the property, if any?

Answer. I do not recollect.

Interrogatory 34. Who collected the rents of the tenants?

Answer. Could not say.

Interrogatory 35. At the time of the auction sale, how long had you been in business?

Answer. I could not tell; might have been two or three years.

Interrogatory 36. State whether or no you attended an auction sale of any other property belonging to the estate of said Daniel Badger, deceased. If yea, when and where?

Answer. I attended a sale of some property in Broad street; I think that was the name of the street; not far from the time of the sale of the other property. It might have been before or later, I could not say.

Interrogatory 37. What time in the day did the sale take place?

Answer. Some time in the day; don't remember.

Interrogatory 38. Did the sale take place inside or outside the building?

Answer. I think it was in the store, but not positive; a small little shop.

175 Interrogatory 39. Who were present?

Answer. I don't recollect.

Interrogatory 40. Can you give the name of one?

Answer. No. I cannot.

Interrogatory 41. How long were you there?

Answer. Could not tell; I should think we were there several hours.

Interrogatory 42. Who bid the property off?

Answer. I did.

Interrogatory 43. At what price?

Answer. I forget the price; don't remember; from five hundred to one thousand dollars.

Interrogatory 44. Who occupied the premises at the time?

Answer. I think Daniel B. Badger did.

Interrogatory 45. Describe the upper part of the premises.

Answer. I can only describe it as being occupied as a dwelling.

Interrogatory 46. State whether or no you conveyed this property to any one, and to whom and when.

Answer. I conveyed it to Daniel B. Badger; could not state how long after; very soon after.

Interrogatory 47. State whether you paid any money to the administrators, or either of them, for this estate.

Answer. I did, but don't recollect how much; there was money past between us.

Interrogatory 48. Did you ever receive a deed for this property from the administrators?

Answer. I think I did, but will not say positive; to the best of my recollection I think I did.

Interrogatory 49. State whether or no you gave Daniel B. Badger a deed of the same at the same time you received the deed from the administrators.

Answer. I don't think that I did. I don't recollect perfectly about it.

Interrogatory 50. Do you know Daniel Gillpatrick?

Answer. I used to know him. I have not seen him for a great many years.

Interrogatory 51. Where did he reside when you knew him?

Answer. In Boston.

Interrogatory 52. Where did he work, and for whom?

Answer. For us, our company, in Boston.

Interrogatory 53. State whether or no Daniel B. Badger was in your shop on the day of the sale, and just before the sale.

Answer. I don't recollect; he might have been; he was frequently in, say once or twice a week.

Interrogatory 54. State whether you heard any conversation between him and Gillpatrick about the time of the sale of the Broad street property.

176 Answer. I don't remember of hearing any conversation between them.

Interrogatory 55. State whether or no you attended the sale of any other property belonging to the estate of Daniel Badger, deceased.

Answer. I don't recollect that I did.

Interrogatory 56. State whether or no you declined to appear before the magistrate to give your deposition before you were served with a subpœna to appear.

Answer. I waited for advice.

WM. P. HART.

UNITED STATES OF AMERICA,
Northern district of Ohio.

Masillon, April 23, 1858.

I, Thomas Blackburn, of Masillon, aforesaid, certify that I am a commissioner of the United States circuit court for said district, duly appointed and qualified pursuant to the act entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," and that the said Hart is a resident of and lives in said Masillon, and that the same is over one hundred miles from said Boston, which is the reason for the tak-

ing of said deposition, and that the said Wm. P. Hart appeared before me this day, and being first carefully examined, cautioned and sworn, to testify the truth, the whole truth, and nothing but the truth, has answered the foregoing interrogatories, propounded by James B. Robb, attorney for and on behalf of said plaintiff, as hereinbefore written; that the interrogatories and answers were reduced to writing by me, and afterward subscribed by the said Hart, in my presence; that no notice was given by me to the adverse party or their attorney to be present, neither of them being within one hundred miles of the place of caption. I further certify that I am not of council for either of the parties to said suit, nor have been, and that I am not interested in the result of the cause. In testimony whereof, I have hereunto set my hand and seal, the day and year above written.

THOS. BLACKBURN,
Commissioner of the United States circuit court for the northern district of Ohio, aforesaid.

177 ASSESSOR'S OFFICE, CITY HALL,
Boston, March 21st, 1862.

This may certify that Daniel D. Badger and Wm. P. Hart, blacksmiths, doing business under the name of Badger & Hart, in a shop on Cross st., belonging to Humphrey & Pierce, were taxed in the name of said firm for the taxable years of 1830 and 1831, for two polls and $1,000 00 personal property, for each of the years named.

J. AVERY RICHARDS, *Assessor.*

The above is the only tax I find to William P. Hart for the years 1830 and 1831.

J. AVERY RICHARDS, *Assessor.*

It is agreed that the above certificate may be taken as a substitute for a deposition stating the same facts, but respondents do not admit, but deny, the competency and relevancy thereof as testimony.

E. MERWIN,
For Respondent Badger.

CITY OF BOSTON, CITY CLERK'S OFFICE,
City Hall, March 21st, 1862.

This is to certify that I have examined the records of the mayor and aldermen of the city of Boston, from the years 1829 to 1835, inclusive, and I have not found therein any record of the appointment or license of *Andrew Brown* as an *auctioneer* of, or within, said city, during said period.

SAM. F. McCLEARY, *City Clerk.*

It is agreed that the above certificate may have the same effect as a deposition to the same facts of the person subscribing the same would properly have, but respondents do not admit their competency or admissibility.

E. MERWIN,
For Respondent Badger.

178 TUESDAY, *Jan'y* 23, 1831.

Administrator's sale of real estate. To be sold at auction, by order of the supreme judicial court, in the county of Suffolk:

On Saturday, the 5th day of Feb'y, so much of the following described real estate of Daniel Badger, late of Boston, in said county, trader, deceased, as will raise the sum of seven hundred and eighty-six dollars, for the payment of debts and incidental charges, to wit: At 10 o'clock a. m., house and land in North Federal court, bounded northerly on Mill Creek, northwesterly on land formerly owned by John Harvey, 34 ft.,—southwesterly on Link alley, so called, 14 ft. 10 in.,—southeasterly, 36 ft. 6 in., with a privilege to the adjoining house, of passing through the back entry. Be all the measurements more or less, with all the privileges and rights that said deceased had to said estate.

Also, at 10 1-4 o'clock a. m., a house and land in Broad street—Nos. 151 and 153—beginning at a point northeast corner of said street, running easterly, and bounded northerly on said street 18 ft.; then southerly 41 ft., to land of Wendall; then westerly 28 ft.; then southwesterly on a stone wall 40 ft.; then running easterly on passage way, there measuring 15 ft., and from thence to the house now, or late, of W. B. Bradford, by the middle of the wall 57 ft. to said street, with all the privileges and bounds in deed recorded with Suffolk deeds, lib. 249, fol. 136.

The said premises have been assigned to the widow of the said Daniel Badger as her dower. The interest and estate to be sold is the reversion in said premises, after the termination of her life estate.

JOSEPH BADGER,
DANIEL B. BADGER,
Admr's.

It is agreed that the foregoing is a true copy of an advertisement found in said paper at said date, but it is not admitted that said advertisement was authorized by the persons purporting to have subscribed the same, and respondents do not admit that the fact above admitted is competent testimony for any purpose.

E. MERWIN,
For Respondent Badger.

179 CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

AUGUSTUS H. BADGER *& al.*
vs.
DANIEL B. BADGER *et al.*
} In equity.

The respondent, Daniel B. Badger, produces and files herewith the several papers referred to in his answer in this case, namely:

1. The second account of the administrators of the estate of Daniel

Badger, deceased, filed in the probate court Sept. 17, 1827, with the approval of the heirs-at-law.

2. The list of debts due from said estate remaining unpaid, filed in probate court Sept. 17, 1827, with the approval thereon.

3. The order of sale made by the supreme judicial court, March term, 1830.

4. The return of the administrators of the sale of real estate to the probate court, made April 25, 1831.

5. The third account of administration filed and allowed April 25, 1831.

By E. MERWIN,
His Solicitor.

The second account of Joseph Badger & Daniel B. Badger, administrators of the goods and estates of Daniel Badger, late of Boston, in the county of Suffolk, gentleman, deceased, viz:

The said administrators charge themselves with the following, received by sales, notes, and accounts, &c.

Balance of first account		$266 52
	Salma Clap	90 17
	J. Dill	70 00
	Jo. Adams	10 00
By P. Reed's bill		3 45
By sale of stone and land on Green's wharf, 6 Dec'r, 1820		955 00
180 By sale of house and land in Lynde st., sold on 6 Dec'r, 1820		2,000 00
By sale of 24 part of house and land in Fleet st. to Thos. Badger		80 00
By cash of H. Badger		3 83
"	John Badger	88
"	for looking glasses	10 75
"	L. Wheelwright	2 88
"	Brooks	17 00
"	J. Bartlett	24 45
"	Jos. Adams	7 50
"	J. Dill	69 50
		$3,611 93
	Isaac Folsome	4 00
	Interest	80
	Jos. Kingman	19 50
	Harlow	1 00
Cash of Mrs. Patterson		25 80
"	Col. Thomas Badger	20 00
"	interest money do	14 50
Cash, Geo. Leeds		3 40
Cash for house sold to Lum at Cambridgeport		600 00
Cash of J. Thompson by suit at law		27 79

Cash of State Bank	$20 09
of R. institution	5 30
	$4,354 02

The said administrators pray allowance for the following charges, allowances, and payments:

Probate fees for 1st account, list of debts, &c	10 85
Bangs & Bradford's account	164 07
Matthew M. Hunt	164 97
Luther Parks	50 92
Chester's bill	2 50
Mrs. Farmer's notes and interest, mortgage	1,246 62
Moses Ammes	33 92
Levi Hawkes	3 00
Moses Rogers	51 00
Cash for bonds, &c., probate	8 50
Doc. bill, funeral charges, digging grave, &c., at Portsmouth	30 13
Discharged mortgage held by the 2d Baptist Church of house in Lynde street	467 75
Paid J. Ammory, note	1,000 00
Interest on 3 thousand paid	378 30
Fessenden, execution and interest	110 00
Daniel Hersey	10 00
French, bill	30 65
A. Ward	38 95
181 L. Harris	78 59
Heard & Aylwin's bill	19 50
E. Trull	54 00
F. C. Lowell	100 00
G. & T. Odiorne	20 11
Cabot & Clark	66 85
Daily Advertiser, bill	7 12
Kingsley	1 25
Jos. Goddard	42 00
2 notes and interest paid Priscilla Badger	332 00
Eunice Jacobs	200 00
Letters, carting, &c., cash	1 00
Advertising schooner Thomas	5 13
Discharging 2 mortgages	50
Cash paid notary public on William Palmer debt	1 25
Advertising petition, 2 papers	7 25
H. H. Fuller, bill	3 86
Ballard & Wright, bill	3 00
Col. Tho. Badger's	19 86
Paid for Badger	45

Samuel Goodrich	$45 00
Error in Capt. David Patch note, credited when not paid	169 00
Esquire Thorndike, bill	4 25
James Bartlett, note	7 55
Paid auctioneer for selling house in C. Port	3 00
Thompson, bill	95 10
J. Johnson	100 00
Paid post office	10
3 yrs. int. pd. J. Amory on two thousand dollars to Nov. 1, 1826	360 00
	$5,459 85
J. Mendum	18 50
Traveller, bill for petition	3 00
Esquire Willis, bill setting off dower	8 00
William Willis, account	12 00
Due D. B. Badger for his time and trouble for settling said estate as administrator	1,309 00
	$6,810 35

BOSTON, *Sept.* 10, 1827.

JOSEPH BADGER,
DANIEL B. BADGER,
Administrators of the estate of Daniel Badger, deceased.

182 BOSTON, *Sept.* 26, 1827.

This is to certify that we, as widow, heirs, and guardians to heirs, have examined the within, and do approve of the same.

For myself, and as guardian to minor children, heirs of Daniel Badger, deceased—to say, Almira A. Badger, Augustus H. Badger, Alfred C. Badger, Eliza S. M. Badger, Mary H. B. Badger, James W. Badger.

ANN BADGER, *Widow and Guardian.*
DANIEL B. BADGER.
DAVID J. BADGER.
JACOB BADGER.
ANN J. BADGER.

SUFFOLK. *ss:*

At probate court held in Boston, in said county, on Monday, the seventeenth day of September, in the year of our Lord one thousand eight hundred and twenty-seven.

The foregoing account having been exhibited to me by Jos. Badger and Daniel B. Badger, administrators of the goods and estate of Daniel Badger, late of said Boston, trader, deceased, intestate, for allowance, and the said administrators having made oath that the said account is just and true, and having produced vouchers and evidence to

prove the same, all which I have examined, and after duly considering the same, I do decree that the said account be and it is hereby allowed and ordered to be recorded.

JOSEPH HALL,
Judge of Probate.

A true copy. Attest:

JOHN HEARD, JR., *Reg.*

A list of debts due by the estate of Daniel Badger, late of Boston, in the county of Suffolk, gentleman, deceased, viz:

2 notes at bank secured by mortgage	$2,000 00
1 year's interest due on above at noon, next	120 00
	$2,120 00
Note due D. Pulsifer	100 00
	$2,220 00

BOSTON, *Sept.* 10, 1827.

JOSEPH BADGER,
DANIEL B. BADGER,
Administrators to estate of late Daniel Badger, deceased.

183 SUFFOLK, *ss:*

At a probate court, held at Boston, in said county, on Monday, the seventeenth day of September, A. D. 1827, Joseph Badger and Daniel B. Badger, administrators on the estate of Daniel Badger, late of said Boston, gentleman, deceased, made oath to the truth of the above list of debts by them subscribed, and I do hereby order the same to be filed and recorded.

JOSEPH HALL,
Judge of Probate.

A true copy. Attest:

JOHN HEARD, JR., *Reg.*

BOSTON, *September* 6, 1827.

We, the undersigned, have examined the within, and do approve of the same, as heirs, guardian, and widow of late Daniel Badger, deceased.

For myself and guardian to minor children of Daniel Badger, deceased—to say, Almira A. Badger, Augustus H. Badger, Alfred A. Badger, Eliza S. M. Badger, Mary H. B. Badger, James W. Badger.

ANN BADGER,
Widow and Guardian.
DANIEL B. BADGER.
D. J. BADGER.
JACOB BADGER.
ANN J. BADGER.

The third account of Joseph and Daniel B. Badger, administrators of the goods and estate of Daniel Badger, late of Boston, in the county of Suffolk, gentleman, deceased.

The said administrators charge themselves with the following amounts received by sales of real estate, sold by order of the supreme judicial court, viz:

1830.		
July.	By cash received for sale of house and land in Cambridgeport, at auction, purchased by Andrew Brimmer, esq	$1,100 00
	By cash received of William P. Hart for houses and land sold at auction, situated in Distil-House square	2,820 00
	By cash for undivided part of an estate in Lynn, sold to N. Breed by auction	40 50
184	1831.	
	March. By cash for house and land sold by auction to Daniel Gilpatrick, situated in North Federal court, subject to the widow of said deceased's life estate	150 00
	By cash for house and land sold to William P. Hart at auction, situated in Broad street, subject to the widow of said Daniel's life estate	613 00
		$4,723 50

The said administrators pray allowance for the following, viz:

1827.		
Sept. 17.	Balance of last administrator's account, settled this day at probate court	$2,456 33
1830.		
June 25.	Amount paid, printing notice of sale of real estate in Boston Daily Advertiser	3 00
July 8.	Amount paid Daniel Hersey's auction bill	8 00
13.	Paid advertising sale of estate in Patriot	1 75
16.	Paid S. Oliver, auctioneer, for selling estate in Lynn	2 00
20.	Paid bill city crier	50
Aug. 9.	Amount paid note held by Dolly Stevens, otherwise called Dolly Pulsifer	100 00
11.	Paid William C. Aylwin, esq., bill for procuring license for sale, drawing deeds, and sundry other expenses	74 24
1831.		
Feb. 16.	Daily Advertiser, 2d bill paid for printing notices of sale	3 33

Mar. 12.	Paid A. Brown, auctioneer, bill for selling estates in North Federal court and Broad street	$4 00
	Amount paid balance due on two notes, secured by mortgage of house and land in Broad st., originally given by deceased to W. Cotton, afterwards assigned to J. Amory, first note of $1,000 paid J. Amory, as allowed in second account of administration, and two notes and interest now taken up	2,120 00
	Paid Badger and Porter for order of notice on this account	1 50
		$4,774 65

JOSEPH BADGER,
DANIEL B. BADGER,
dm's.

185 SUFFOLK, *ss:*

At a probate court held at Boston, in said county, on Monday, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and thirty-one.

The foregoing account having been exhibited to me by Joseph Badger and Daniel B. Badger, administrators of the goods and estate of Daniel Badger, late of said Boston, gentleman, deceased, intestate, for allowance, and the said administrators having given public notice, pursuant to my order, for all persons interested therein to appear here this day and show cause, if any they have, against the allowance thereof, and no person appearing to object thereto; and the said administrators having made oath that the said account is just and true, and having produced vouchers and evidence to prove the same, all which I have examined, and after duly considering the same, I do decree that the said account be, and it is hereby, allowed and ordered to be recorded.

JOSEPH HALL,
Judge of Probate.

A true copy. Attest:

JOHN HEARD, JR., *Reg.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

At the supreme judicial court begun and holden at Boston, within the county of Suffolk, and for the counties of Suffolk, Nantucket, on the first Tuesday of March, in the year of our Lord one thousand eight hundred and thirty.

Upon the petition of Joseph and Daniel B. Badger, as they are administrators of the estate of Daniel Badger, late of said Boston, gentleman, deceased, intestate, showing that the just debts which the intestate owed at the time of his death, which now remain unpaid, together with the money advanced for the payment of just debts and the charges of administration as settled and allowed by the probate

court, amount to the sum of four thousand six hundred and seventy-six dollars and thirty-three cents; and that the real estate undisposed of under a former order of sale was of the value of eight thousand and eight hundred dollars, according to the inventory, but a part thereof is subject to the widow's dower, and praying a renewal of the license, and that they may be empowered to sell so much of said real estate as will enable them to pay said debts, money advanced, charges of administration, and charges of sale. Whereupon it was or-
186 dered that the petitioners should give notice to all persons interested in the prayer of said petition, and to David J. Badger and Jacob Badger, both of said Boston, to Thomas Richardson and Ann J., his wife, and to Almira A. Badger and Augustus H. Badger, a minor under the guardianship of said Jacob, being heirs-at-law of said Daniel Badger, deceased, to appear before this court on Monday, the twenty-ninth day of March instant, by serving them with an attested copy of said petition and this order thereon seven days before said twenty-ninth day of March, that they might then appear and show cause, if any they had, why the prayer of said petition should not be granted. And afterwards, in this same term, it appearing that due notice had been given to all persons interested pursuant to said order; and said Daniel B. Badger, Thomas Richardson, and Ann, his wife, Almira A. Badger and Jacob Badger, and said Jacob as guardian of Augustus H. Badger, and Ann Badger, widow, as guardian of her children Eliza M. Badger, Alfred C. Badger, Mary H. B. Badger, and James W. Badger, minors, heirs-at-law of said Daniel Badger, deceased, having signified in writing their consent to said sale, and the judge of probate of said county having certified the value of the real estate and the value of the personal estate of said deceased, and the amount of the just debts and charges of administration, and also his opinion that so much of the real estate of said deceased should be sold as would be sufficient for the payment thereof and incidental expenses:

It is thereupon ordered that the said administrators be, and they are hereby, authorized and empowered to sell, and to make, sign and execute in due form of law, deeds and conveyances of so much of the real estate of said Daniel Badger, deceased, as will raise the sum of four thousand six hundred and seventy-six dollars and thirty-three cents for the payment of the just debts of the deceased, and money advanced by the administrators for payment of just debts and charges of administration, and fifty dollars more for incidental charges, first giving notice of the time and place of sale by publishing an advertisement thereof three weeks successively in the Boston Daily Advertiser, being under oath, and in all other respects complying with the rules of law in this behalf provided by the court.

JNO. CALLENDER, *Clerk.*

Administrator's sale of real estate.

By order of the supreme judicial court, will be sold at public auction the following described real estate, late the property of Daniel Badger, deceased, viz:

At Lynn, on Friday, the 16th of July, at 5 o'clock p. m., all the right and title to the following described estate, containing
187 about one acre, with the buildings thereon, situated southerly by General hill, so called; E. and N. by Thomas Bowler's, and westerly by Breed's estate. Said estate is undivided.

Also, at Boston, on Tuesday, the 20th day of July, at 11 o'clock, a large lot of land, with the buildings thereon standing, situated in Distil-House square, bounded on Distil-House square about 60 feet, northwest on Tidd's estate about 60 feet, northeast across said land about 60 feet, southeast on Uttley's estate about 60 feet, be all the measurements more or less. The estate has a double wooden house for two families, as also a small one thereon, with a well of pump water, it being an excellent chance for a building lot.

Also, at 5 o'clock p. m., at Cambridgeport, a three-story brick house, with barn land and out-buildings, in a block of ten houses, called First Row, bounded on the street 24 feet, in depth about 140 feet, with a good garden spot and pump of excellent water. The house is large and convenient, and in a pleasant and healthy situation.

JOSEPH BADGER,
DANIEL B. BADGER,
Administrators.

We, Joseph Badger and Daniel B. Badger, administrators of the estate of Daniel Badger, deceased, do testify and say that, pursuant to an order of the supreme judicial court, licensing and empowering us to make sale of so much of the real estate of Daniel Badger, aforesaid, deceased, as will raise the sum of four thousand six hundred and seventy-six dollars and thirty-three cents, for the payment of the just debt of the deceased, and money advanced by the administrators for payment of just debts and charges of administration, and fifty dollars more for incidental charges, which license was granted at the March term, A. D. 1830, we did give notice of the time and place of sale of one parcel of real estate, situate in Lynn, in the county of Essex, on Friday, the 16th day of July, A. D. 1830; of another parcel situate in Boston, on Distil-House square, to take place on Tuesday, the twentieth day of July, of the year aforesaid; and of another parcel situate at Cambridgeport, in the county of Middlesex, on the same day, by publishing an advertisement thereof three weeks successively in the Boston Daily Advertiser, before the days of sale, the said Daily Advertiser being the newspaper in which said order of court directed the same to be printed. And on said sixteenth day of July, the parcel of estate situate in Lynn was struck off to N. Breed, for the sum of forty dollars and fifty cents; and on said twentieth of July, the parcel of estate situate in Distil-House square, in said Boston, was struck off to William P. Hart for twenty-eight hundred and twenty dollars; and the parcel in Cambridgeport on the same day was struck off to Andrew Brimmer, for eleven hundred dollars. And the aforesaid sales were respectively made by public auction upon the several estates aforesaid, and the aforenamed persons were the highest bidders for

each of said estates. And we further testify that the foregoing
188 is one of the original advertisements by us published three weeks successivly in said Boston Daily Advertiser.

JOSEPH BADGER.
DANIEL B. BADGER.

SUFFOLK, *ss:*

At a probate court held at Boston, in said county, on Monday, the twenty-fifth day of April, A. D. 1831. Then the said Joseph Badger and Daniel B. Badger, administrators within named, appeared and made oath to the truth of the within declaration by them subscribed.

Before me,

JOSEPH HALL,
Judge of Probate.

A true copy. Attest:

WM. C. BROWN, *Reg.*

Administrators' sale of real estate.

To be sold at public auction, by order of the supreme judicial court, in the county of Suffolk, on Saturday, the 12th day of March, so much of the following described real estate of Daniel Badger, late of Boston, in said county, trader, deceased, as will raise the sum of seven hundred and eighty-six dollars, for the payment of debts and incidental charges, to wit:

At 10 o'clock a. m.. house and land in North Federal court, bounded northerly on Mill creek 14 feet, 6 inches; northwesterly on land formerly owned by John Harvey, 24 feet; southwesterly on Link alley, so called, 14 feet, 10 inches; southeasterly 36 feet 6 inches, with a privilege to the adjoining house of passing through back entry, be all the measurements more or less, with all privileges and right that said deceased had to said premises.

Also, at ¼ past 10 o'clock a. m., a house and land in Broad street—Nos. 151 and 153—beginning at a point northeast corner of said street, running easterly, and bounded northeasterly on said street 18 feet; then southeasterly 44 feet, to land of Wendall; then westerly 28 feet; then southwesterly on stone wall 40 feet; then running easterly on passage-way, there measuring 15 feet; and from thence to the house now or late of W. B. Bradford, by the middle of the wall, 57 feet to said street, with all the privileges and bounds in deed recorded with Suffolk deeds, lib. 249, fol. 136.

The said premises have been assigned to the widow of said
189 Daniel Badger as her dower, and the interest and estate to be sold in the reversion in said premises, after the termination of her life estate.

By order of the administrators.

We, Joseph Badger and Daniel B. Badger, administrators of the estate of Daniel Badger, deceased, do on oath declare that pursuant to a license of the supreme judicial court, granted at the March term, A. D. 1830, in Suffolk, empowering us to make sale of so much of the

real estate of said deceased as will raise the sum of four thousand six hundred and seventy-six dollars and thirty-three cents, for the payment of the just debts of the deceased, and money advanced for payment of debts and charges of administration, and fifty dollars more for incidental charges, he did give notice of the time and place of sale of one parcel of real estate situate in north Federal court, and of another in Broad street, in said Boston, by publishing advertisements thereof three weeks successively before the time fixed for the sale, in the Boston Daily Advertiser, being the newspaper in which the notice was ordered to be given. And on the twelfth day of March, A. D. 1831, the first of said parcel was struck off to Daniel Gilpatrick for one hundred and fifty dollars; and the second parcel to William P. Hart, for six hundred and thirteen dollars, at public sales by auction on the respective premises, they being the highest bidders therefor. And we further say that the above is one of the original advertisements by us so published three weeks successively before said sales in the Boston Daily Advertiser.

JOSEPH BADGER.
DANIEL B. BADGER.

SUFFOLK, *ss:*

At a probate court held at Boston, in said county, on Monday, the twenty-fifth day of April, A. D. 1831, then the said Joseph Badger and Daniel B. Badger, administrators aforesaid, appeared and made oath to the truth of the above declaration, by them subscribed before me.

JOSEPH HALL, *Judge of Probate.*

A true copy. Attest:

WM. C. BROWN, *Reg.*

190 UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.] The circuit court of the United States, within and for the Massachusetts district.

To R. W. Lansing, esq., of Madison, in the State of Wisconsin, commissioner of the United States circuit court, &c.:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower, you to take the answers [to the interrogatories hereunto annexed] of Andrew Brown, of said Madison, a witness to be examined on behalf of the respondent, and to be used in a certain cause now pending in said court, wherein Augustus H. Badger and al. are plaintiff, *vs.* Daniel B. Badger and al., defendant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken

the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition,
191 either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

The execution of the within commission appears by the answers of Andrew Brown, and the return and examination hereto annexed. The answer of

ROBERT W. LANSING,
United States Commissioner, &c.

Dated Madison, Wisconsin, May 3d, 1858.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District, ss:

A. H. BADGER *et al.*
vs.
DANIEL B. BADGER *et al.* } In equity.

Interrogatories filed by the respondent, Daniel B. Badger, to take the deposition of Andrew Brown, of Madison, in the State of Wisconsin, to be used in behalf of the respondents.

1. Please state your name, age, residence, and occupation.

2. Please state whether or not you resided in the city of Boston, Massachusetts, in the year 1830 and 1831, or any part thereof; and what was then your occupation.

3. Please state whether or not you sold any estates in said city of Boston, or any interest therein, belonging to the estate of one Daniel Badger, deceased; if yea, what estates, when and where did you sell

the same, to whom, and for what price respectively, and by whose order was said sale made. Please examine the two exhibits hereto annexed, viz: the newspaper paragraph, marked thus X at
192 each corner, and the paper writing, marked A. State what they are, and answer this interrogatory fully, and in detail.

4. If you have stated that said newspaper paragraph is the original advertisement of said auction sales, please state who prepared and caused the same to be inserted. How long or how many times it was published, and whether any other; and if so, what other means were employed to give notice of the time and place of said sales.

5. Please state when said auction sales took place in reference to the times notified in said advertisement.

6. Please state about how many persons, if you recollect, attended said auction sales, respectively.

7. For what sort of price, according to your best opinion and belief at the time, did said estates or interests sell respectively, taking into consideration the incumbrance of the widower's dower thereon?

8. Do you know, or did you know at the time of said sales, Joseph Badger, and the respondent, Daniel B. Badger, the administrators of the said Daniel Badger, or either of them? If yea, please state what instructions you received from them, and especially from said Daniel B. Badger, in reference to said auction sales, and the manner in which they were to be conducted.

9. Please state whether or not you were requested by the said Daniel B. Badger, either directly or indirectly, to knock down said estates, or either of them, to any particular person, or at any particular price.

10. Please state whether you knew, or whether it was hinted to you by either of said administrators, or by any one else, who were to be bidders at said sales, or who would endeavor to be the purchasers thereat.

11. If anything was said or done by either of said administrators tending to show that said sales were not conducted in good faith, or that either had any secret interest therein, please state the same fully.

12. Please state in what manner said auction sales were conducted, and what was your own conduct therein.

13. Please state whether or not the said Daniel B. Badger attended said auction sales; and if so, state whether or not anything was said or done by him thereat to encourage or dissuade bids; and if so, which, and state fully what was said or done by him in that respect. State fully.

14. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination of the matters in question in this cause? If yea, set forth the same fully, and at large in your answer.

By E. MERWIN,
Solicitor for Respondent.

193 A.

Messrs Joseph and Dan'l B. Badger, administrators,
To Andrew Brown, Dr.

March 12, 1821.

For selling house and land in North Federal court at public auction, belonging to the estate of Daniel Badger, deceased. Sold to Mr. Daniel Gillpatrick for the sum $150 00. Also house and land in Broad street, belonging to the same estate. Sold to William P. Hart for the sum of $613 00.

Am'd fees $4 00

Rec'd pay't,

ANDREW BROWN, *Auct'r.*

X. X.

Administrators' sale of real estate.

To be sold at public auction, by order of the supreme judicial court, in the county of Suffolk, on Saturday, the 12th day of March, so much of the following described real estate of Daniel Badger, late of Boston, in said county, trader, deceased, as will raise the sum of seven hundred and eighty-six dollars, for the payment of debts and incidental charges, to wit:

At 10 o'clock a. m., house and land in North Federal court, bounded northerly on Mill creek, 14 feet 6 inches; northwesterly on land formerly owned by John Harvey, 34 feet; southwesterly on Link alley, so called, 14 feet 10 inches; southeasterly, 36 feet 6 inches, with a privilege to the adjoining house of passing through back entry, be all the measurements more or less, with all privileges and rights that said deceased had to said premises.

Also, at ¼ past 10 o'clock a. m., a house and land in Broad street, No. 151 and 153, beginning at a point northeast corner of said street, running easterly and bounded northeasterly on said street 18 feet; then southeasterly 44 feet, to land of Wendall; then westerly 28 feet; then southwesterly on stone wall 40 feet; then running easterly on passage-way, there measuring 15 feet; and from thence to the house now or late of W. B. Bradford, by the middle of the wall 57 feet to said street, with all the privileges and bounds in deed recorded with Suffolk deeds, lib. 249, fol. 136.

The said premises have been assigned to the widow of said Daniel Badger as her dower, and the interest and estate to be sold is the reversion in said premises, after the termination of her life estate.

By order of the administrators.

X. X.

ANDREW BROWN.

R. W. LANSING,
United States Commissioner, &c.

194 CIRCUIT COURT UNITED STATES,
Massachusetts District, ss:

AUGUSTUS H. BADGER *& al.*
vs.
DANIEL B. BADGER *et al.* } In equity.

Cross-interrogatories propounded by the plaintiff to Andrew Brown, a witness to be examined in behalf of the respondents.

The plaintiffs objects to the third int., because the paper is the best evidence, also to the 7th int., unless it shall appear that the witness is competent, by experience, to testify as an expert upon the subject, and to the 9th and 10th ints., as leading, and also the 11th. And not waiving the same, propounds the following cross-interrogaries:

1 cross. Where did you reside in 1832, and where have you resided since that time to the present? State the several places in which you have so resided, and what has been your occupation, and how and by whom have you been employed at each place in which you have so resided?

2 cross. If you shall have said, in answer to the 2d direct int., that you were an auctioneer in the year 1830 and '31, state whether you were duly licensed as an auctioneer to sell at public auction in the city of Boston.

3 cross. Where was your place of business in said city? State the street and number.

4 cross. If you shall have stated, in answer to the 3d direct int., that you sold real estate in North Federal court and in Broad street, belonging to the said estate, state which estate was sold first. Did the sales take place inside the building or outside? Did you go into the buildings on each of the premises?

5 cross. If not, why not?

6 cross. Was the door of the house in North Federal court locked not? Did you have the key?

7 cross. Did you, or some one of you, get into the window and put out a red flag?

8 cross. Have you a record of said sales, or either of them, made at the time? If yea, where is it? If in your possession, annex it, or a copy of it.

9 cross. Of the persons present at the sale in North Federal court, how many were personally known to you?

10 cross. State the names of such as were known to you.

11 cross. Name one of the persons present.

12 cross. Who were present at the sale in Broad street whose names were known to you?

195 13 cross. Give the names of as many as you can.

14 cross. If you have undertaken to state the time of day when the sales took place respectively, state how you are enabled to fix the time.

15 cross. Was a crier employed to give notice of the sale of these estates?

16 cross. If, in answer to the 8th direct interrogatory, you should have stated that instructions were given you by Daniel B. and Joseph Badger, as to the conduct of said sale, and you shall have undertaken to state what they were, discriminate with particularity between what was so said or given by the one, and what by the other of them.

17 cross. Who occupied the house in Broad street at the time of the sale? Was not Daniel B. the tenant or occupant?

JAMES B. ROBB,
For Plaintiffs.

The circuit court of the United States, within and for the Massachusetts district.

AUGUSTUS H. BADGER & *al.*
vs.
DANIEL B. BADGER & *al.*

Deposition of witness produced, sworn and examined in the above entitled cause on the part of the respondents, under and by virtue of the commission and the interrogatories hereto annexed.

Be it remembered that on the third day of May, one thousand eight hundred and fifty-eight, at the city of Madison, in the county of Dane, and in the district of Wisconsin, Andrew Brown personally appeared before me, Robert W. Lansing, a commissioner appointed to take affidavits and acknowledgements of bail, pursuant to the several acts of Congres, and also a master in chancery.

And the said Andrew Brown, separate and apart from all other persons, being by me first carefully examined and cautioned, and duly sworn to testify the truth,, the whole truth and nothing but the truth, in the matters in the above entitled cause, on the several direct and cross-interrogatories, hereto annexed, did depose and say, to the said several direct and cross-interrogatories, as follows, that is to say:

196 First. To the first direct interrogatory he answers and says: My name is Andrew Brown; am fifty-eight years old; I reside in the city of Madison, in the county of Dane and State of Wisconsin, and have no particular occupation at the present time.

Second. To the second direct interrogatory, he answers and says: My family resided in Cambridgeport, Middlesex county, during some part of the year 1830, and the forepart of the year 1831, at which time I was doing business in the city of Boston, in the State of Massachusetts, and was then an auctioneer in said city.

Third. To the third direct interrogatory he answers and says: I sold the estates described in the newspaper exhibit, hereto annexed, marked thus X at each corner, and signed by my proper name in writing, or the reversionary interest of one Daniel Badger, deceased, in and to the same, as in the said newspaper exhibit or no-

tice is specified. The estates so sold by me, as auctioneer aforesaid, were, first, the housea nd land in North Federal court; and second, the house and land in Broad street, No. 151 and 153, as are in said printed notice set forth, on the twelfth day of March, 1831, and at the hours therein specified, or as near the same as may be, and on the premises in each case respectively. That I sold the house and land in North Federal court to one Daniel Gilpatrick, for the sum of one hundred and fifty dollars; and the house and land in Broad street, No. 151 and 153, to one William P. Hart, for the sum of six hundred and thirteen dollars, and that said sales were made by me, as such auctioner, by order of Joseph Badger and Daniel B. Badger, administrators of the estate of Daniel Badger, deceased. That the newspaper paragraph, marked thus X, I believe take the original advertisement of such sales, and the paper exhibit, marked A, in my own proper handwriting, is my receipted bill of account against said estate for my services in making said sales.

Fourth. To the fourth direct interrogatory he answers and says: That, according to the best of my recollection and belief, the said newspaper paragraph or notice was drawn up and prepared by me, at my office in the said city of Boston, under and by the direction of the said administrators, and the same was caused to be inserted and published in said newspaper, called the "Boston Daily Advertiser," by one or both of said administrators, and was published therein four weeks previous to the day of sale therein mentioned, and I believe that the same notice was published in one or two other newspapers, in said city of Boston, but in what papers I don't now remember; and that the same was also announced by the city crier on the morning of the day previous to said sales, as I verily believe.

Fifth. To the fifth direct interrogatory he answers and says: That the said auction sales took place, on the 12th day of March, 1831, at or near the hour after in the forenoon the first sale, and immediately thereafter the second sale, both sales taking place as near the hours therein stated as could be.

197 Sixth. To the sixth direct interrogatory he answers and says: I have now no distict recollection of how many persons attended said auction sales; but there were not less than twelve and between that number and twenty-five, and perhaps more.

Seventh. To the seventh direct interrogatory he answers and says: Not recollecting that I formed any opinion at that time, I can not state what sort of a price said interests sold for at the respective sales thereof.

Eighth. To the eighth direct interrogatory he answers and says: I was personally acquainted with both Joseph Badger and the respondent, Daniel B. Badger, administrators of the said Daniel Badger, deceased, at the time of said sales, and for a year or more previous thereto. That the instructions given me in reference to said auction sales were mainly if not wholly given by said Daniel B. Badger, he being the principal active man, and the instructions thus given me were to sell the said interests for the best possible price.

Ninth. To the ninth direct interrogatory he answers and says, I

was not requested by the said Daniel B. Badger, either directly or indirectly, to knock down said estates or either of them to any particular person or at any particular price.

Tenth. To the tenth direct interrogatory he answers and says: I did not know nor was it hinted to me by either of said administrators, or by any one else, who were to be bidders at said sales, or who would endeavor to be the purchasers thereof.

Eleventh. To the eleventh direct interrogatory he answers and says: Nothing having been said or done by either of said administrators tending to show that said sales were not conducted in good faith, or that either had any secret interest therein, I cannot answer the same.

Twelfth. To the twelfth direct interrogatory he answers and says: The said auction sales were conducted in the fair, open, and usual manner of auction sales, by reading the printed advertisements at each of said sales, by calling and waiting for bidders, and by knocking down the same at the highest price and to the highest bidders therefor, and that my own conduct as such auctioneer at such sales was open, fair, and honest, and that I dwelt longer than usual upon such sales with a view of obtaining the very highest prices therefor.

Thirteenth. To the thirteenth direct interrogatory he answers and says: That said Daniel B. Badger attended both of said auction sales, and was particularly active in encouraging bids for the property, and that he then and there substantially stated to persons present that the property was selling at a sacrifice; that the estate was in debt, and that it was necessary the property should be sold at the highest possible price.

Fourteenth. To the fourteenth and last direct interrogatory he answers and says: Not.

ANDREW BROWN.

198 Subscribed and sworn to this 3d day of May, A. D. 1858, before me.

R. W. LANSING,
United States Commissioner, &c.

And I do further certify that the preceding answers to the several direct interrogatories were reduced to writing by me, and signed by the said Andrew Brown, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof. Also, that the annexed exhibits marked A and thus, X, were produced and sworn to by said witness, at the same time. Dated May 3d, 1858.

R. W. LANSING,
United States Commissioner, &c.

Cross-examination

To the several cross-interrogatories hereto annexed, the said Andrew Brown testifies as follows; that is to say:

First. To the first cross-interrogatory he answers and says: I re-

sided in South Reading, in the State of Massachusetts, for the whole of the year 1832, and was clerk and bookkeeper for Burrage Yale, esquire; that in the year 1833 I removed to the State of Maine, and resided in the said State until the year 1851; that during my residence in the State of Maine I was engaged in mercantile business, in operations in lumber and mills, and in the management of real estate, both as proprietor and agent and attorney for other parties; that in the year 1851 I removed to the State of Wisconsin, and that in this State I have been engaged a part of the time in farming, and also as an agent of the Milwaukie and Mississippi Railroad Company, and am at this time residing upon my own estate in the city of Madison aforesaid.

Second. To the second cross-interrogatory he answers and says: In the year 1830 and 1831 I was duly licensed as an auctioneer to sell at public auction in the city of Boston.

Third. To the third cross-interrogatory he answers and says: In the year 1831, and at the time of the sales of the said estates, my place of business was at the corner of Water and Devonshire streets, in said city of Boston.

Fourth. To the fourth cross-interrogatory he answers and says: The first of said estate was sold by me in North Federal court, and that both sales took place inside the respective buildings, and I went into the buildings on each of the premises.

199 Fifth. To the fifth cross-interrogatory he answers and says: Nothing.

Sixth. To the sixth cross-interrogatory he answers and says: I went to the house in North Federal court at the hour of sale, and found the door open and several persons inside of the house, and I did not have the key.

Seventh. To the seventh cross-interrogatory he answers and says: I did not, nor do I know any one who did, get into the window and put out a red flag; but I do know that there was a red flag out at each of said buildings on the day of, and before the sales, as was customary.

Eighth. To the eighth cross-interrogatory he answers and says: I have no record of said sales, or either of them, they having been destroyed by me years ago.

Ninth. To the ninth cross-interrogatory he answers and says: Of the persons present at the sale in North Federal court, none were known to me, as I can recollect, except the said administrators; but my belief is, that most of the persons then present were strangers, and that I did not know the purchaser by name until after the said sale.

Tenth. To the tenth cross-interrogatory he answers and says: Joseph Badger, Daniel B. Badger, and Daniel Gillpatrick were known to me, the two first named before, and the last named after said sale. There might have been others, but whom, if any, at this late day, I don't remember.

Eleventh. To the eleventh cross-interrogatory he answers and says: Daniel B. Badger was one of the persons present.

Twelfth. To the twelfth cross-interrogatory he answers and says: Daniel B. Badger, and I think Joseph Badger, also a man by the name of Quinn, and Wm. P. Hart, the purchaser, were present at the sale in Broad street, whose names were known to me, except that of Hart, which was not known to me until after the sale.

Thirteenth. To the thirteenth cross-interrogatory he answers and says: In my answer to the twelfth cross-interrogatory I have given the names of all I can now positively remember.

Fourteenth. To the fourteenth cross-interrogatory he answers and says: I am enabled to fix the time partly from my memory, assisted by the printed notice of sale, and that from my uniform custom in holding sales, I have no doubt of the sales having taken place at the advertised times.

Fifteenth. To the fifteenth cross-interrogatory he answers and says: A crier was employed to give notice, by a general arrangement made by me with the city crier, of all sales made by me, and I have no doubt he cried these sales.

Sixteenth. To the sixteenth cross-interrogatory he answers and says: In my answer to the eighth direct interrogatory I have therein stated all I can now remember in regard to the instructions given me in respect to said sales, and I cannot more particularly
200 discriminate what was said by the one or the other of said administrators, than what I have therein stated.

Seventeenth. To the seventeenth and last cross-interrogatory he answers and says: The house part of the building in Broad street, at the time of the sale, was occupied by Irish tenants, unknown to me, and the store on the lower floor of the building was occupied as a store by said Daniel B. Badger.

ANDREW BROWN.

Subscribed and sworn to this 3d day of May, A. D. 1858, before me.

R. W. LANSING,
United States Commissioner, &c.

And I do further certify that the preceding answers to the several cross-interrogatories were reduced to writing by me, and signed by the said Andrew Brown.

Dated May 3d, 1858.

R. W. LANSIG,
United States Commissioner, &c.

201 UNITED STATES OF AMERICA,
Massachusetts District, ss:

The circuit court of the United States, within and for the Massachusetts district.
[L. S.]

To Edward G. Loring, of Boston, commissioner of the circuit court of the United States, Massachusetts district:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and

sided in South Reading, in the State of Massachusetts, for the whole of the year 1832, and was clerk and bookkeeper for Burrage Yale, esquire; that in the year 1833 I removed to the State of Maine, and resided in the said State until the year 1851; that during my residence in the State of Maine I was engaged in mercantile business, in operations in lumber and mills, and in the management of real estate, both as proprietor and agent and attorney for other parties; that in the year 1851 I removed to the State of Wisconsin, and that in this State I have been engaged a part of the time in farming, and also as an agent of the Milwaukie and Mississippi Railroad Company, and am at this time residing upon my own estate in the city of Madison aforesaid.

Second. To the second cross-interrogatory he answers and says: In the year 1830 and 1831 I was duly licensed as an auctioneer to sell at public auction in the city of Boston.

Third. To the third cross-interrogatory he answers and says: In the year 1831, and at the time of the sales of the said estates, my place of business was at the corner of Water and Devonshire streets, in said city of Boston.

Fourth. To the fourth cross-interrogatory he answers and says: The first of said estate was sold by me in North Federal court, and that both sales took place inside the respective buildings, and I went into the buildings on each of the premises.

199 Fifth. To the fifth cross-interrogatory he answers and says: Nothing.

Sixth. To the sixth cross-interrogatory he answers and says: I went to the house in North Federal court at the hour of sale, and found the door open and several persons inside of the house, and I did not have the key.

Seventh. To the seventh cross-interrogatory he answers and says: I did not, nor do I know any one who did, get into the window and put out a red flag; but I do know that there was a red flag out at each of said buildings on the day of, and before the sales, as was customary.

Eighth. To the eighth cross-interrogatory he answers and says: I have no record of said sales, or either of them, they having been destroyed by me years ago.

Ninth. To the ninth cross-interrogatory he answers and says: Of the persons present at the sale in North Federal court, none were known to me, as I can recollect, except the said administrators; but my belief is, that most of the persons then present were strangers, and that I did not know the purchaser by name until after the said sale.

Tenth. To the tenth cross-interrogatory he answers and says: Joseph Badger, Daniel B. Badger, and Daniel Gillpatrick were known to me, the two first named before, and the last named after said sale. There might have been others, but whom, if any, at this late day, I don't remember.

Eleventh. To the eleventh cross-interrogatory he answers and says: Daniel B. Badger was one of the persons present.

Twelfth. To the twelfth cross-interrogatory he answers and says: Daniel B. Badger, and I think Joseph Badger, also a man by the name of Quinn, and Wm. P. Hart, the purchaser, were present at the sale in Broad street, whose names were known to me, except that of Hart, which was not known to me until after the sale.

Thirteenth. To the thirteenth cross-interrogatory he answers and says: In my answer to the twelfth cross-interrogatory I have given the names of all I can now positively remember.

Fourteenth. To the fourteenth cross-interrogatory he answers and says: I am enabled to fix the time partly from my memory, assisted by the printed notice of sale, and that from my uniform custom in holding sales, I have no doubt of the sales having taken place at the advertised times.

Fifteenth. To the fifteenth cross-interrogatory he answers and says: A crier was employed to give notice, by a general arrangement made by me with the city crier, of all sales made by me, and I have no doubt he cried these sales.

Sixteenth. To the sixteenth cross-interrogatory he answers and says: In my answer to the eighth direct interrogatory I have therein stated all I can now remember in regard to the instructions given me in respect to said sales, and I cannot more particularly
200 discriminate what was said by the one or the other of said administrators, than what I have therein stated.

Seventeenth. To the seventeenth and last cross-interrogatory he answers and says: The house part of the building in Broad street, at the time of the sale, was occupied by Irish tenants, unknown to me, and the store on the lower floor of the building was occupied as a store by said Daniel B. Badger.

ANDREW BROWN.

Subscribed and sworn to this 3d day of May, A. D. 1858, before me.

R. W. LANSING,
United States Commissioner, &c.

And I do further certify that the preceding answers to the several cross-interrogatories were reduced to writing by me, and signed by the said Andrew Brown.

Dated May 3d, 1858.

R. W. LANSIG,
United States Commissioner, &c.

201 UNITED STATES OF AMERICA,
Massachusetts District, ss:

The circuit court of the United States, within and for the Massachusetts district.
[L. S.]

To Edward G. Loring, of Boston, commissioner of the circuit court of the United States, Massachusetts district:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and

empower you to take the answers [to the interrogatories hereunto annexed] of Mrs. Maria Wood, of Boston aforesaid, witness to be examined on behalf of the respondent, and to be used in a certain cause now pending in said court, wherein Augustus H. Badger *et al.*, plaintiff, in equity, *versus* Daniel B. Badger *et al.*, defendant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witnesses, the honorable Roger B. Taney, at Boston, this eighth day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving her deposition in answer to the interrogatories annexed to this com-
202 mission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

DISTRICT OF MASSACHUSETTS, *May* 10, 1858.

The execution of the within commission appears by the schedules annexed.

EDWARD G. LORING, *Com.*

Circuit court of the United States, Massachusetts district.

AUGUSTUS H. BADGER *et al.*
vs.
DANIEL B. BADGER *et al.* } In equity.

Interrogatories filed by the respondent, Badger, to take the deposition of Mrs. Maria Wood, of Boston, Massachusetts, to be used on the trial of the above-entitled cause :

Int. 1. Please state your name, age, and residence.

Int. 2. Please state whether you know the respondent, Daniel B.

Badger, and whether you were in his employ, and if so, where, and in what capacity?

Int. 3. Please state whether or not you ever knew Eliza M. Badger, Mary H. B. Badger, and James W. Badger, children of the late Daniel Badger, of Boston, deceased, and sisters and brother of the respondent, Daniel B. Badger. If yea, please state when and where you knew them or either of them.

Int. 4. Please state whether or not you have ever had any conversation yourself, or have you been present at and heard any conversation between the said Eliza M., Mary H. B., and James W. Badger, or either of them, and the respondent, or between them, or either of them, and any other person, as to who owned or had purchased the estates formerly belonging to their father, the said Daniel Badger, deceased, and known as the Distil-House square, the North Federal court, and the Broad street estate respectively. If yea, please
203 state said conversations, or the substance of them; and also by and between whom, and where and when, the same took place.

Int. 5. Please state whether or not you have ever heard the said Eliza M. Badger, Mary H. B. Badger, and James W. Badger, either or all of them, if not all, which of them, make any statement or declaration in reference to who was the owner, or had purchased the estate formerly belonging to their late father, Daniel Badger, deceased, known as the Distil-House square, North Federal court, and Broad street estate, respectively, or either of them. If yea, who was present? When and where was such statement made, and how often, if more than once?

Int. 6. If in answer to preceding interrogatories, you have stated that you have heard either of said persons named make any statement or have any conversations in reference to the ownership of the estates inquired of in the two preceding interrogatories, please now state with what degree of confidence you can testify as to the same, particularly as to the dates when, or about when, any such conversations may have been had. And please state whether you have any means of fixing such dates, and if so, please state what such means are.

Int. 7. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that they may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

By E. MERWIN,
His Solicitor.

CIRCUIT COURT UNITED STATES.
Massachusetts District, ss:

A. H. BADGER *& al.*
vs.
DANIEL B. BADGER *& al.*
} In equity.

Cross-interrogatories to Mrs. Maria Wood, a witness to be examined on behalf of the respondent Badger.

The plaintiffs object to the issuing of a commission to take the deposition of this witness, as no sufficient description of her residence is given, and propounds the following *de bene esse:*

1st. cross. Are you married? Have you a husband living, or are you a widow? Where do you now reside? Give the street and number of the house in which you reside.

204 2d cross. If you have answered the second direct interrogatory by stating that you were ever in the employ of Daniel B. Badger, state what name you were then known by; when you left his employ where you went to; by whom you were employed, if by any one, after that; how long did you remain there; where did you go to next, and by whom and how have you been employed since you left his employment, to the present time.

3d. cross. If you shall have stated that you have been married, state what your maiden name was. Whom did you marry? Have you been married more than once? State fully.

4th cross. Where have you resided since 1831?

5th cross. If you shall have answered the 4th direct interrogatory by stating that you have heard such conversations, state fully and with particularity what was said by the said Eliza M., and to whom it was said; when and where it was said; who was present; what property did she refer to; and how do you know it. If you shall have stated that there was any more than one conversation, state particularly what was said at each.

6th cross. What was said by Mary H. B.? State fully and with particularity, what was said by her, and to whom it was said; when and where; and if more than once, state what was said each time, and who was present. To what estate did she refer? How do you know it?

7th cross. What was said by James W.? State fully and with particularity what was said by him. To whom was it said? When and where; and if more than once, state what was said each time. Who was present? To what estates did he refer? How do you know it?

8th cross. Where did Mrs. Ann Badger and the family reside at the time the conversations, if any, before referred to took place? What street and number?

9th cross. Have you not heard the said Eliza M., Mary H. B., James W., and other members of the family, or either, and which of them, reproach Daniel B. Badger for his conduct as administrator, and as a brother? Have you not heard them tell him that he had planned to get the whole of the real estate in the city of Boston, belonging to

the children into his possession, in violation of his duty, and in fraud of their rights, or something to that effect? Have you not heard Mary H. B. say so, or substantially so? State what she so said to him.

10th cross. Have you not heard Eliza M. tell him so, or something to that effect?

11th cross. Have you not heard Almira A. Badger, Augustus H. and Alfred C., or either, and which of them, tell him so, or to that effect?

12th cross. State whether you know William P. Hart. Where did he board in the years 1830 and 1831? Whether or no he boarded with Daniel B. Badger at any time, and when?

205 13th cross. State whether or no you ever heard Daniel B. Badger say that as the oldest son he was entitled to all the property left by his deceased father, and that he meant to have it.

14th cross. State whether or no he ever told you, or that you ever heard him say, that he had bought the Still-House square estate. If yea, when did he tell you first; how long after the sale of it at auction?

15th cross. Have you had any conversation with Daniel B. Badger within the past fortnight, or with any one else, about the subject-matter of your testimony? If yea, with whom? Have you learned from any one, and whom, the substance of the questions that were to put to you? Have you received any information upon this subject? Have you had any conversation with any one, and whom, about it?

JAMES B. ROBB,
Solicitor for Pl'ff

The respondent objects to the 9th, 10th, and 11th cross-interrogatories as calling for the declarations of the complainants, or some of them, as otherwise incompetent.

By E. MERWIN,
Their Solicitor.

Answers of Mrs. Maria Wood to the interrogatories to her addressed.

To the first. My name is Maria Wood; my age is forty-three; I reside with my husband, No. 9 Billerica street, Boston.

To the second. I paid Daniel B. Badger. I was clerk in his store in 1832, in Broad street, Boston.

To the third. When I attended Mr. D. B. Badger's store, I knew personally the said Eliza M. Badger, Mary H. B. Badger, and James W. Badger. I used then to talk with them.

To the fourth. I have heard Eliza and James several times talking with Daniel B. Badger as if he owned them—that is, as if it was understood that he owned all these different estates—but at this length of time I can't recollect what was said. This was in the shop and while I was employed there.

To the fifth she says: I have stated in my last answer all I know as to the matter.

To the sixth she says: I am confident of what I have stated, but I cannot fix the date otherwise.

To the seventh. I know nothing more that I am aware of, except that Eliza and James seemed very kind to Daniel B. They came to him to get money.

206 *Answers of said Mrs. Maria Wood to the cross-interrogatories:*

To the first. I have stated that I am married, and my residence.

To the second. My name was Maria Rice when I went into Mr. Badger's employment. I worked for him in the shop a year and a half, and after that occasionally job work for him until about 1847, when I left Mr. Badger and went into the employ of my brother, and was in no other employ till I was married.

To the third. My maiden name was Maria Rice. In 1835 I married Curtis McCleed, and in 1845 I married James F. Wood, my present husband.

To the fourth. In Boston.

To the fifth. I cannot state any more than I have.

To the sixth. I cannot state in relation to her except I know the subject has been talked about in her presence.

To the seventh. I can only say as to him—James W.—that I have heard him talking with Mrs. Badger about the subject, as I have stated.

To the ninth. I never did.

To the tenth. No.

To the eleventh. No.

To the twelfth. I do not know him.

To the thirteenth. Never such a word.

To the fourteenth. He stated to me soon after I went into his shop that he owned the estate in Still-House square. I have heard him state it to others—who to, or where, I cannot now say.

To the fifteenth. Mr. Badger called upon and asked me to recollect the conversations I had heard, as he had been sued and would want my testimony as to them. That is all.

MARIA WOOD.

DISTRICT OF MASSACHUSETTS:

This tenth day of May, A. D. eighteen hundred and fifty-eight, personally appeared before me the above-named Maria Wood, and after having been duly cautioned and sworn to speak the truth the whole truth, and nothing but the truth, in relation to the cause for which her deposition is taken, was examined apart by me on the interrogatories and cross-interrogatories to the commission annexed, and her answers thereto, written down by me in her presence, after being carefully read over by me to her, were by her subscribed in my presence as and for her deposition, taken by virtue of said commission prefixed hereto, and for the cause therein specified.

EDW'D S. LORING, *Comm'r.*

207 UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.] The circuit court of the United States, within and for the Massachusetts district.

To Edward G. Loring, of Boston, commissioner of the circuit court of the United States, Massachusetts district:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presence do authorize and empower, you to take the answers [to the interrogatories hereunto annexed] of William Parker, of Boston aforesaid, a witness to be examined on behalf of the respondent, and to be used in a certain cause now pending in said court, wherein Augustus H. Badger and *al.*, plaintiffs in equity, *vs.* Daniel B. Badger and *al.*, defendant.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this eighth day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties, in writing, permit either party to attend at the taking of the deposition,
208 either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

DISTRICT OF MASSACHUSETTS, *May* 8, 1858.

The execution of this commission appears by the schedules hereto annexed.

EDWARD G. LORING, *Com.*

Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

A. H. BADGER *et al.* }
vs. } In equity.
D. B. BADGER *et al.* }

Interrogatories filed by the respondent, Badger, to take the deposition of William Parker, of Boston, in said district, to be used on the trial of the above-entitled cause.

Int. 1. Please state your name, age, residence, and occupation.

Int. 2. Do you know the respondent, Daniel B. Badger, and about how long have you known him?

Int. 3. Whether or not you ever were present at any interview between said Daniel B. Badger and Daniel Gillpatrick, then of said Boston, when a deed was given to the said Badger by the said Gillpatrick? If yea, please state when and where said interview took place, and all that was said or done at the same. Did you see or read said deed?

Int. 4. State whether or not anything was said at said interview by said Gillpatrick, or by said Badger in his presence, as to what the estate was that was conveyed by said deed.

Int. 5. Whether or not anything was then said by said Gillpatrick in reference to the price at which he was selling said estate to said
209 Badger, and whether or not did he give any reason why he sold the same to said Badger. If yea, please state fully all that he said in reference to the same.

Int. 6. Please state whether or not anything was said either by the said Gillpatrick or the said Badger as to the estate in said deed having been the house in which said Badger was born. If so, what?

Int. 7. Whether or not you saw any money paid by said Badger to said Gillpatrick. If yea, do you know how much? State all that you know in reference to the payment of money at said interview.

Int. 8. Have you any means of fixing the time when you witnessed said interview? If yea, please state the same.

Int. 9. Please state how you happened to be present at the interview inquired of in the preceding interrogatories, if you were present.

Int. 10. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

E. MERWIN,
Solicitor of Respondent.

1027

Circuit court United States.

DISTRICT MASSACHUSETTS, *ss:*

A. H. BADGER & *al.*
vs.
DANIEL B. BADGER *et al.* } In equity.

The plaintiffs object to the following interrogatories propounded by said respondent, Badger, to William Parker, a witness to be examined on his behalf, to wit :

To so much of the 3d interrogatory as requires witness to state what was said at the interview referred to, and as to whether witness saw or read anything called a deed.

To the 4th, as calling for parol evidence of the contents of a written paper.

210 To the 5th, unless it appears that the plaintiff, or either of them, was present, and to any statement of the witness upon the subject inquired about.

To the 6th, because it is either an attempt to prove, by parol, a part of the contents of a written paper or deed, or to prove a fact by the declaration of the respondent himself.

And not waiving the above objections, propounds the following cross-interrogatory:

1 cross. State what connection, if any, of a business nature existed between you and the said Daniel B. at the time or before and after. What was your business ? Did he not have some business connections or transactions with you ? If yea, what were they ? Explain fully.

JAS. B. ROBB,
Sol'r for Pl'ffs.

Answers of William Parker, of Boston, to the interrogatories to him addressed.

To the first. 1. My name is William Parker; my age is seventy-two; my residence is in Boston, and occupation was that of master mariner. I have none now.

To the second. 2. I have known Daniel B. Badger since 1820.

To the third. In the spring of 1831, in February or March, I went into Mr. Daniel B. Badger's store, No. 51 Broad street, having business with him. I found him with another gentleman, and having money out and paying it, I told him he was flush of money; he said he had been buying real estate, and he pushed toward me a deed which was lying on the counter. I read it and said the name was Daniel D. Badger, and I said that that was not his name; he said no, that it was the name of a relation of his. Seeing, also, the name of Gillpatrick in the deed, I asked who he was, and if an Irishman. He said no; this is the gentleman, and he designated the person present. Mr. Gillpatrick said he could get more for his house, but that as Mr. Badger said it was the house he was born in, he should hold to his

contract. I recollect nothing more, and I did not remain there after this.

To the fourth. 4. Only Mr. Badger's remark to me at first that he had been purchasing an estate in North Federal court.

To the fifth. Nothing more than I have stated above.

To the sixth. What I have said before.

To the seventh. I saw Mr. Badger paying money to Gillpat-
211 rick. I don't know how much; I did not inquire, and I know nothing more.

To the eighth. I can only say that I think it was in the forenoon, in February or March. I have no memorandum now by which I can fix it.

To the ninth. I went to get some money of Badger, and I got it of him that day. I had a memorandum of this in a book which I have looked for and cannot find, that would have shown the date.

To the tenth. I know nothing more than I have stated.

Answer of said William Parker to the cross-interrogatories.

To the first. The only business I had with Mr. Badger, at or before this transaction, was occasionally borrowing money of him. In 1832, and till 1835, I rented a desk in his office, and had no other business connections with him. At the time of the interview stated above I was engaged in shipping seamen.

WM. PARKER.

DISTRICT OF MASSACHUSETTS, 1*st circuit:*

This eighth day of May, A. D. 1858, personally appeared before me the above-named William Parker, who, after being duly cautioned and sworn to speak the truth, and the whole truth, and nothing but the truth in relation to the cause for which his disposition was taken, was examined by me apart on the interrogatories and cross-interrogatories to him addressed, and annexed to the commission hereto prefixed, and his answers thereto, written down by me in his presence, were by him subscribed in my presence, as and for his deposition, taken by the authority of the commission hereto prefixed, and for the cause specified therein.

EDW'D G. LORING, *Comm'r.*

212 UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.] The circuit court of the United States within and for the Massachusetts district.

To Hon. Edward G. Loring, of Boston:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answer [to the interrogatories hereunto annexed] of John Quinn, jr., Charlestown, Massachusetts, a witness to be examined on behalf of the respondent, and to be used in a certain cause now pending in said court, wherein A. H. Badger and al., plaintiffs, in equity, *vs.* Daniel B. Badger and al., defendant.

And to this end, at certain days to be by your appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness, the Honorable Roger B. Tanney, at Boston, this tenth day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

H. W. FULLER, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by
213 interrogatories or suggestions with the deponent whilst giving his deposition in answer to the interrogatories annexed to this commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

BOSTON, *Massachusetts District.*

The execution of this commission appears by the schedule annexed. April 10, 1858.

EDWARD G. LORING,
U. S. Commissioner to take bail and affidavits, Mass. Dis.

Circuit court of the United States.

DISTRICT OF MASSACHUSETTS.

A. H. BADGER *et al.*
vs.
DANIEL B. BADGER *et al.*

Interrogatories filed by Daniel B. Badger to take the deposition of John Quinn, jr., to be used on behalf of said respondent.

1. Please state your name, age, residence, and occupation or profession.

2. Where did you reside in the years 1830 and 1831, and what was your business then; were you in any way connected in business with

the said Dan'l B. Badger; if so, how; when did you cease to be so connected with him?

3. Whether or not you were present at an auction sale of an estate in Distil-House square, so called in 1830 or 1831, by the administrators of one Daniel Badger? If yea, please state who was the auctioneer at said sale, and when the same took place, and in what part of the day.

214 4. Please state whether or not you were present at an auction sale by the said administrators of an estate in Broad street, and also of an estate in North Federal court, so called, in the year 1831; if yea, who acted as auctioneer at said sales, and in what part of the day did they take place?

5. If, in answer to the 3d and 4th interrogatories, you answer that you were present at the several auction sales therein inquired of, then please state how many persons, or about how many, according to your best recollection, were present at each of said sales; state how the same were conducted; and state also if anything was done or said by said Daniel B. Badger to encourage or dissuade bidders at said sales, and if anything, what.

6. At the time of said auction sales were you familiar with said property, and if so, at what sort of a price, in your opinion, at that time did the property sell for?

Also please state, if you know, what was the opinion of the other persons present in reference to said prices.

7. Please state whether or not you were present at or heard any negotiations between William P. Hart and the said Daniel B. Badger for the purchase by said Badger from said Hart of the Distil-House square estate purchased by said Hart at said auction sale, or any request by said Hart or said Badger to purchase the same. If yea, please state all that you so heard.

8. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause?

By E. MERWIN,
Att'y of Respondent.

A true copy. Attest:

H. W. FULLER, *Clerk.*

Circuit court United States.

MASSACHUSETTS DISTRICT, *ss:*

A. H. BADGER *et al.* } In equity.
vs.
DANIEL B. BADGER *& al.* }

Cross-interrogatories filed by A. H. Badger *et als.* to John Quinn, jr.

The plaintiffs object to the issuing of a commission because the esidence of Quinn is not given. The plaintiffs object to the 6th in-

terrogatory, as asking for an opinion of witness in a matter in
215 which it does not appear that he is an expert, and also, because defendant seeks thereby to elicit hearsay testimony.
They also object to the 7th interrogatory because it is leading.

And, not waiving the above objection, file the following cross-interrogatories :

First cross-interrogatory. Where have you resided since the year 1830, and how long have you resided there? What has been your business?

Second cross-interrogatory. Where did you reside previous to the year 1830, and what was your business?

Third cross-int. Were you possessed of any and what property in the year 1830 and 1831? If yea, what, and to what amount?

Fourth cross-int. If, in answer to the third and fourth direct ints., you shall have stated that you were present at said sales, and have stated in what part of the day they took place, please state, and explain fully, how you are enabled to fix the time of day when said sales took place.

Fifth cross-int. When was your attention first called to the subject inquired about in the direct interrogatories, and by whom?

Sixth cross-int. Has your attention been called to the subject by Dan'l B. Badger, or any other person, within five years past, or at any time? If yea, when and by whom? How often, and what was said to you by him or them?

Seventh cross-int. Have you received any letter or letters from Dan'l B. Badger, or any person on his behalf, relating to the subject matter of your testimony? If yea, where are they? Please annex the same or copies thereof.

Eighth cross-int. When and by whom were you requested to come to this city to testify, or requested to give your testimony in this case?

Ninth cross-int. Has Dan'l B. Badger or any other person made any statements to you on the subject of your testimony, or shown you any papers or memoranda to refresh your recollection thereof? If yea, state what such statements or memoranda were, and when and by whom they were made and shown to you.

Tenth cross-int. Name the persons who were present at said auction sales as far as you know them, and their business or occupation.

Eleventh cross-int. Can't you give the names of any others than those you have named in your preceding answer?

Twelfth cross int. How many persons did you talk with at said sales about and concerning the same?

Thirteenth cross-int. Did said sales take place inside the buildings or outside?

Fourteenth cross-int. Name the persons with whom you talked at said sales concerning the same. State the names of such persons, the time and place where each of said conversation was had.

Fifteenth cross-int. Have you, in answer to the fifth direct int., stated all that was said and done by Dan'l B. Badger at said

216 sales? If you shall have stated that anything was said and done by said Dan'l B. at said sales, state at which of said sales, particularly, said acts were done, and if anything was said and done by him at each of said sales. State fully what was said and done at the one sale and what at the others.

Sixteenth cross-int. If you shall have undertaken to state what was said by said Dan'l B., have you given his exact words? Have you stated all that he so said?

Seventeenth cross-int. How, and by whom, and where were you employed at the time each of said sales took place?

JAS. B. ROBB,
Att'y for Pl'ff.

I, John Quinn, of Charlestown, in the State of Massachusetts, of lawful age to testify on oath, depose and say in answer to interrogatories and cross-interrogatories to him addressed, and answered to the commission hereto affixed.

In answer to the direct interrogatories aforesaid, as follows:

To the first. 1. My name is John Quinn, jr; my age is fifty-four; my residence is at Charlestown, aforesaid; I am a lieutenant in the United States revenue service.

To the second he says. 2. In 1830 and 1831 I resided in Boston. I was then in the employ of Daniel B. Badger, who was in business and kept a clothe furnishing store for seamen in Boston. I was an out-door clerk of his, and my business was to get customers for him among sailors; that was my only connection with him in business. I left him in March, 1834, and went to sea soon after. In the year 1844 I was again employed by him in the same way for about twelve months, and have had no business connection with him since then.

To the third he says. 3. I was present at the auction sale of an estate in Distil-House square. It was in July, 1830, as near as I can recollect. It was the estate of Daniel Badger, and Mr. Daniel B. Badger was his son and administrator. The auctioneer was Daniel Hersey. The day I do not recollect, either by the week or month. It was in the forenoon; it was between nine o'clock and one o'clock. I cannot state more particularly.

To the fourth. I was present at the sale of both estates by the said administrator at auction. Mr. Brown was the auctioneer in both sales; his christian name I do not know. The estate in North Fed-
217 eral court was sold first, but both were sold in the same forenoon in March or April, 1831. I cannot state the time more particularly.

To the fifth. At the sale in Distil-House square I should think some twenty or twenty-five persons were present. At the Federal court estate sale there were from twenty to twenty-five persons present, I should think; there was quite a large number at the sale of the Broad street estate. I should not think there were more than from ten to fifteen persons present. At the sale of the estate in Distil-House square the auctioneer read the advertisement of the sale in the

newspaper, and said the estate was to be sold to pay debts, and to the highest bidder; he then proceeded to sell the estate.

Mr. Daniel B. Badger was there, and as they dwelt upon it some time, he said that he thought the estate was going too low, and he did everything to encourage the sale that he could by speaking to the auctioneer to dwell upon it, and by saying to the auctioneer that he hoped he would not let it go too low. The estate was sold to the highest bidder.

At the sale of the Federal court estate, Mr. Daniel B. Badger wat present. The auctioneer stated the estate would be sold subject to the widow's dower; whether Mr. Badger made any remarks or not, I do not recollect. The estate was purchased by Mr. Gillpatrick.

Afterward, on the same day, the estate in Broad street was sold subject to the widow's dower. Mr. Badger was there; I don't remember that he said anything, or did anything. The estate was sold to a Mr. Hart.

To the sixth. I had never seen the property before the sale. I went there at the invitation of Mr. Badger. From the location of the Distil-house Square estate, and the state of the buildings on it, I thought the price got a very fair one; it was so thought by gentlemen attending the sale. I heard Mr. Trull and others say so. The prices obtained for the estates in Federal court and Broad street were less than they would have been if sold free from the widow's dower, but, under the circumstances, I considered the prices very fair, and others expressed that opinion at the sale.

To the seventh, 7. I remember Mr. Hart came into Mr. Badger's store, and was anxious to sell to Mr. Badger some estate, but which it was of those mentioned I don't recollect. I heard Mr. Hart urging a purchase, but I don't recollect what was said, or whether any agreement was made.

To the eighth, 8. I know nothing.

To the cross-interrogatories to him addressed thereto prefixed, the said deponent saith:

1. Since 1830 I have resided at Boston and Charlestown, all the time. I have been away from home at sea off and on, probably all together twelve years of the time. My business has been that of mariner.

218 To the second. Previous to 1830 I resided in Boston. I was part of the time a shipping master, and the rest of the time at sea.

To the third, 3. Of none.

To the fourth, 4. By my memory only.

To the fifth. Mr. Daniel B. Badger mentioned it to me a year ago, for the first time.

To the sixth. Only as stated in the last answer. He merely asked me if I recollected the time of the sales. I told him I recollected attending the sales, and I looked at my journal to see the time I was in his employ.

To the seventh. I received none.

To the eighth. I met Mr. Badger accidentally at church, and he asked me to go to his counsel's office, and I did so, and Mr. Merwin arranged for taking my testimony.

To the ninth. Mr. Badger showed me the advertisement in the paper of the Distil-house square; he showed me nothing else, nor did any one, nor did he or any one make any statements to me.

To the tenth. At the Distil-house square sale, old Mr. Trull was present. Mr. Brown, the auctioneer, Mr. Badger, and Mr. Gillpatrick were the only persons I knew personally of those attending the sales.

To the eleventh. No, sir.

To the twelfth. Some two or three.

To the thirteenth. Outside.

To the fourteenth. I cannot name them for I did not know the time and place were those of the sales, and those I can't specify further than I have.

To the fifteenth. I have done so.

To the sixteenth. Only what I could recollect in substance and words. The words I imputed to him are as near as I can recollect them.

To the seventeenth. I was in Mr. Badger's employ as thus stated.

JOHN QUINN,
1st Lt. U. S. R. S.

FIRST CIRCUIT DISTRICT OF MASSACHUSETTS.
This tenth day of April, A. D. eighteen hundred and fifty-eight.

I caused the said John Quinn, named in the commission hereto prefixed by the authority thereof, to come before me at Boston, in said district, and then and there the said Quinn, being duly cautioned and sworn to speak the whole truth by me, was by me care-
219 fully examined on the interrogatories annexed to said commission, and on the cross-interrogatories hereto prefixed, which, by the agreement of the said parties in the said cause, were to be taken as if formally annexed to said commission, and the answers of said Quinn to said interrogatories and cross-interrogatories on said examination, taken apart and separate from all other persons, were written down by me in his presence, and after being carefully read over to him by me, were signed by me in his presence, as and for his deposition, taken by authority of, and for the cause specified in the commission aforesaid.

Witness my hand, April 10th, 1858.

EDWARD G. LORING,
Commissioner U. S. Ct. to take bail and affidavits Massachusetts District.

220 UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.] The circuit court of the United States within and for the Massachusetts district.

To Charles P. Curtis, Jr., Esq., commissioner of the United States circuit court, Boston, in the district of Massachusetts.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers [to the interrogatories hereunto annexed] of Moses Pond and Edward J. Jones, of Boston, witnesses to be examined on behalf of the defendant, and to be used in a certain cause now pending in said court, wherein James W. Badger, plaintiff, *versus* Daniel B. Badger *et al.*, defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, holden at Boston, as soon as the same may be executed.

In testimony whereof, we have caused the seal of the said circuit court to be hereunto affixed.

Witnesses, the honorable Roger B. Taney, at Boston, this fourth day of October, in the year of our Lord one thousand eight hundred and sixty-one.

H. W. FULLER, *Clerk.*

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving their depositions in answer to the interrogatories annexed to this
221 commission. And you shall take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly.

Circuit court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

JAMES W. BADGER
vs.
ERASTUS B. BADGER *et al.* } In equity.

Interrogatories filed by E. B. Badger, one of the said respondents, to take the deposition of Edward J. Jones, of Boston, in said district, to be used in said case.

1. Please state your name, age, residence, and occupation?

2. Please state whether or not you were acquainted with Daniel B. Badger and Ann Badger, deceased, in their lifetime, and also with any and which of the children of said Ann Badger; and if yea, please state when said acquaintance began and how intimate it was, and whether or not you were related to either of said parties and in what way.

3. If you say that you formerly married a daughter of said Daniel B Badger, please state whether she is now living, and if not when did she die.

4. Please state whether or not you were ever present when the conduct of said Daniel B. Badger, as administrator of his father's estate, was a subject of conversation by said Ann Badger, deceased, with any of her children; if yea, please state what was said by said Ann Badger, and also when and where, and how often, if more than once, said conversations took place, what was said at each of said conversations, and who was present.

5. Whether or not you know of any payments of money by said Daniel B. Badger to said Ann Badger; if yea, please state fully all you know relating thereto.

6. Please state what was Mrs. Ann Badger's physical and mental condition during the time you knew her.

222 7. Please state where said Mrs. Ann Badger resided when you first became acquainted with her, and how long did she reside there, and which, if any, of her children resided with her, and what was the apparent style in which they lived.

8. Whether or not, if you know, did she receive payments of rent from any one and from whom; and from whom did she receive, if from any one, rent for the real estate assigned to her for dower.

9. Please state, if you know who, if any one, was reputed or referred to by the children of said Ann Badger as the owner of the real estate in Boston, left by their deceased father, subject to said Ann Badger's dower. Whether or not you ever heard such ownership referred to, or spoken of by them, or by either of them, and by which, and when, and what was the age or ages of those by whom such ownership was spoken of or referred to, and who was the person thus spoken of as owner.

10. Do you know, or can you set forth any other matter or thing,

which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully, and at large in your answer.

E. MERWIN,
Solicitor for Respondents.

Cross-interrogatories to said E. J. Jones.

1st cross. Are you at present related to said Erastus B. Badger, and how?

2d cross. If in answer to the 4th direct interrogatory you shall have stated conversations between the said Ann Badger and her children, set forth particularly the place or places where such conversations took place; name the number of the house and street, and state what business you had there at the time; who commenced said conversation, and whether or not you were consulted by the members of the family, or any one of them, upon the subject matter thereof, or whether you were merely a listener.

3d cross. Have you not said that the family were dissatisfied with the conduct of said Daniel B. towards his mother, and with his conduct as administrator, and that you always understood or believed that they had just grounds of complaint against him, or something to that effect, and what?

4th cross. Have you not so stated to Moses M. Smith?

5th cross. If, in answer to the 5th direct interrogatory, you shall have testified as to payments of money to said Ann Badger by said Daniel B., state who was present when the same was paid, where it was paid, at what place or places, and where the said Ann Badger then resided, and by whom it was paid, and whether or not
223 you were present as a witness to such payments, and whether or not receipts were given.

6th cross. If, in answer to the 7th direct interrogatory, you shall have spoken of the apparent style in which Mrs. Ann Badger and her children lived, state fully what you mean, and whether Mr. and Mrs. Moses M. Smith did not reside with her at that time. Did you not know that her house was furnished to a very great extent with their furniture? Can you state what furniture in said house belonged to Mrs. Ann Badger? Whether or not she employed a servant during that time. Do you not know that she had no servant, and that she did her own work with the assistance of her daughters alone; and did she not have boarders?

7th cross. If, in answer to the 8th direct interrogatory, you shall have undertaken to speak of payments of rent, state how you know anything about it. When were such alleged payments made? Who was present? How much was paid each time, and when and by whom?

8th cross. Did not the said Daniel B. ask you to loan him money on a mortgage of the Broad street estate and the Distil-house square

estate, or either of them: and did you not tell him that you were not satisfied with his title to these estates, or either and which of them, or something to that effect?

9th cross. Did you not so state to Mr. Moses M. Smith and others something, and what, to that effect?

10th cross. Have you not said that you hoped the children of Mrs. Badger would succeed in their suit against said Daniel B., because you knew or believed they had been wronged by him, or something to that effect?

11th cross. Have you not so said to Moses M. Smith, and to one or more other persons?

12th cross. Have you called upon any person or persons recently to know what he or they knew about this case, of service to the said Erastus B., and have you requested any one to call upon the said Erastus B.? And have you ever requested any one to call upon him in reference to testifying about the matter?

13th cross. Did you ever meet Daniel B. Badger at his mother's house? If yea, how often? What was the apparent state of feeling between Mrs. Ann Badger and her children and the said Daniel B., friendly or otherwise? If not friendly, can you state the reason?

JAS. B. ROBB,
Sol'r for Pl'ff.

The respondent, E. B. Badger, objects to the 3d, 4, 8, 9, 10, 11th, and the last clause of the 13th cross-interrogatories filed to Edward J. Jones, as incompetent, irrelevant, and immaterial.

By E. MERWIN,
His Solicitor.

224 Circuit Court United States.

DISTRICT OF MASSACHUSETTS, *ss:*

JAMES W. BADGER, *vs.* E. B. BADGER *et al.* } In equity.

Interrogatories filed by E. B. Badger, one of said defendants, to take the deposition of Moses Pond, of Boston, to be used in said case:

1. Please state your name, age, residence, and occupation.

2. State whether or not you knew Daniel B. Badger, late of Boston, deceased. If yea, please state when your acquaintance with him begun, and how long it continued, and how intimately you were acquainted with him.

3. State whether or not you know in what business said Badger was engaged in the year 1820, and for ten or fifteen years thereafter. If so, please state the same, its nature and extent, and whether prosperous or otherwise; and what was said Daniel B. Badger's pecuniary condition during said period.

4. Whether or not you were acquainted with Mrs. Ann Badger,

formerly of Boston, deceased, and mother of said Daniel B. Badger. If so, when did your acquaintance begin, and how long continue?

5. Please state what was the general state of health of Mrs. Ann Badger during the period you knew her, and how was she as to mental capacity; and especially about the year 1830, and before and subsequent thereto.

6. Please state, if you know, the style as to comfort or otherwise in which the said Mrs. Ann Badger lived during her residence in Boston, after she became a widow.

7. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

By E. MERWIN,
Solicitor of respondent.

Cross-interrogatories to said Moses Pond.

1. If you shall have answered the 2d direct interrogatory, state where the said Daniel B. carried on business at the time spoken of; how often and how long at a time you were in his store or shop; and give a description of his stock in trade, what changes took
225 place in it from time to time, and what amount of stock he had on hand from time to time, and how you are enabled to speak of his business operations.

2. Did you ever have any business transactions with said Daniel B? If yea, what were they?

3. What business were you engaged in at the period or periods referred to in the 1st cross-interrogatory, and at what place or places?

4. Did you ever visit Mrs. Ann Badger and her family at her house? If yea, how often, and where did she then reside? Have you such knowledge from personal observation as to enable you to speak of her style of living in her own house, and the manner in which the family were provided for? If yea, state what observation you made, and what means you had of so judging.

5. If you shall have undertaken to speak of Mrs. Ann Badger's state of health and mental capacity, in answer to the 5th direct interrogatory, please set forth fully your means of judging, and how you formed your judgment as to these matters.

JAS. B. ROBB,
Sol'r for Pl'ff.

Answers of Edward J. Jones, a witness named in the annexed commission to the several interrogatories therein contained.

1. To the first interrogatory he answers, my name is Edward J. Jones; my age is thirty-eight; residence in Boston; my occupation is that of a constable of the superior court, criminal branch.

2. To the second interrogatory he answers, I was acquainted with Daniel B. Badger and Ann Badger in their life time. I knew all the

members of the family, but was not intimately acquainted with any of the children except James, Mary, Eliza, Almira, and David.

My first wife was the grand-daughter of Ann Badger, the daughter of Daniel B. Badger.

My acquaintance with those parties began in the year eighteen hundred and forty-two. They visited my house and I visited theirs, and the relations were as friendly as usual between families. There never was any difficulty between us.

3. To the third interrogatory he says, she died in the year eighteen hundred and forty-six.

4. To the fourth interrogatory he says, I have been present when the conduct of Daniel B. Badger, as administrator, was made a subject of conversation by Mrs. Ann Badger, on several occasions, at her house. I know that such conversations occurred several times at the old lady's house. I cannot fix the times, but I know that the
226 children would accuse Daniel of having done something wrong, and the old lady would dispute them and rebuke them sharply for saying so, adding that she knew more about the matter than they did, and that she knew that it was all right. This I have heard her say myself.

I can state that at such conversations, sometimes my wife was present, and sometimes James, and Mr. Smith, the husband of Eliza; and Mary and Almira, and sometimes Eliza herself. I cannot state any specific accusation made against him, but I recollect that the charge would be against his conduct as administrator of his father's estate. I have no recollection of Daniel being present at any of such conversations.

5. To the fifth interrogatory he says, I know that money was paid to her by Daniel. I have seen James and Mary come to Daniel's shop for money on behalf Mrs. Badger. I did not see it paid, but I have heard Mrs. Ann Badger say that Daniel was not prompt in paying. I have also heard her admit that she had received rent from him. I know of no other money transactions between Mrs. Ann Badger and Daniel, except rent.

6. To the sixth interrogatory he says, she appeared to be a lady of remarkably good health, very cheerful and full of vitality, remarkably so for an old lady of her age. I never knew her to be sick, and never heard her complain of being sick up to the time of her last sickness, during all my acquaintance with her. She was a fleshy woman, had a bright eye, and all the indications of health, a fresh countenance and a cheerful manner.

7. To the seventh interrogatory he says, when I first knew her she lived in Myrtle street, in Boston, she resided there for four or five years. James, Mary, Eliza, Almira, David, and Mr. Smith, Eliza's husband lived with her. They lived in fashonable style, better than ordinary. In the usual acceptation of the terms she had what is called a genteel family. Part of the time she kept two servants, and part of the time one. They often spoke of having company. I used to run in there of an evening and take tea.

8. To the eighth interrogatory he says, none from any source ex-

cept from Daniel. I never knew of her having any income except what she derived from him. I have heard her say that that was her only income, that was the reason why she wished the payments to be made promptly, so that she could keep up appearances, this is my inference.

9. To the ninth interrogatory he says, Daniel was the only one I ever heard spoken of as the owner, and I have often heard him spoken of by his brothers and sisters, and the old lady, as the owner. This was a generally understood fact, and the general talk of the house, whenever the subject was referred to. The children, except James, were all of age when I knew them. I think James was not of age, but he was close to it. Daniel was always spoken of, when the subject was mentioned, as the only one who had any ownership in the real estate.

227 10. To the tenth interrogatory he says: I don't know what I can state more than I have stated.

Answers of the said Edward J. Jones to the several cross-interrogatories in said commission contained.

Cross 1. To the first cross-interrogatory he says, his wife and my present wife are sisters.

Cross 2. To the second cross-interrogatory he says, I have covered all the ground of this question in my answer to the fourth interrogatory. I cannot tell the number of the house, but they lived in only one house, in Myrtle street. I was there as a listener, and considered myself one of the family. These conversations occurred both before and after I was married. Some one of the children usually commenced the conversations. I cannot tell which one at the present time, but I very well recollect the conversations. I was not consulted about the matter, as I remember.

Cross 3. To the third cross-interrogatory he says, no, sir. The only ground for believing such a state of things was from what I heard the children say. I had no other knowledge of any grounds of dissatisfaction. I remember saying to Mr. Smith once, that if what they said was true, I did not blame them for being dissatisfied, but I never said I believed them to be true. I never said that I believed that the family had just grounds of complaint against Daniel as administrator. I never knew anything about the matter, except what I heard from the children.

Cross 4. To the fourth cross-interrogatory he says, I have never made any statement to Mr. Smith, except what I have testified in my previous answer.

Cross 5. To the fifth cross-interrogatory he says, I think I have answered this interrogatory in full. I never witnessed any payments.

Cross 6. To the sixth cross-interrogatory he says, in regard to the furniture, I can only say that I never knew that any of it belonged to Mrs. Smith. She and her husband boarded with Mrs. Badger, in Myrtle street, and I afterwards saw the same furniture in Mrs. Badger's part of a large house, which she and Mr. and Mrs. Smith

occupied at Jamaica Plain. Mrs. Badger did not keep boarders in Myrtle street, to my knowledge. I never saw a boarder there, and never heard of one till now. The young ladies always made a very fashionable appearance, and write for a newspaper called the Christian Reflector. I do not know that Mrs. Badger kept no servant. I know that my wife and I have repeatedly been let in to the house by a servant.

Cross 7. To the seventh cross-interrogatory he says, I was present on two or three occasions when James Badger or Mary came to Daniel B. Badger's store in Broad street to receive the rent for their mother. I can't say that I saw the money paid down and picked up,
but from what occurred I know that money was paid. At
228 some of these times Mary came, and at others James came. I
don't know how much was paid.

Cross 8. To the eighth cross-interrogatory he says, yes, sir. He asked me to loan him three hundred dollars for a few days, and promised to secure me by a mortgage on the Broad street estate, but I did not have it to lend. I never told him I was not satisfied with the title. This transaction was after this suit was brought, and I think it likely I asked him whether the estate was under attachment. But I never had the money to lend, so that it was wholly immaterial to me whether his title was good or not.

Cross 9. To the ninth cross-interrogatory he says, I never stated anything to Mr. Smith, or any one else, inconsistent with my last answer.

Cross 10. To the tenth cross-interrogatory he says, I recollect saying to Mr. Smith that if what they said was true, I hoped they would be able to show it; but I never said I believed Daniel had wronged them, for I never believed so myself.

Cross 11. To the eleventh cross-interrogatory he says, never.

Cross 12. To the twelfth, on the fourteenth of September last, at the request of Erastus B. Badger, I called on David Badger, postmaster at South Malden, and inquired of him what facts he knew of the style of living, and the health of the old lady and her family, and I requested him to call and see Erastus B. Badger, and he agreed that he would. That is the only person I recollect calling upon with reference to becoming a witness in this case. This David Badger is a cousin of the one previously mentioned by me.

Cross 13. To the thirteenth cross-interrogatory he says, I think I have met him there, in all two or three times, not more. The state of feeling between Daniel B. and the other children was not cordial. I have heard them speak disrespectfully of him. I never recollect hearing the old lady or Daniel speak disrespectfully or unkindly of each other. I have heard Daniel speak of his brothers and sisters as anxious to prejudice his mother against him. I know of no reason, beyond what I have stated, for this state of things among them.

EDWARD J. JONES.

229 *Answers of Moses Pond, one of the witnesses named in the commission hereto annexed, to the several interrogatories therein contained.*

1. To the first he says, my name is Moses Pond; my age, sixty-one. I live in Boston, and sell ranges, furnaces, &c.

2. To the second he says, I was well acquainted with Daniel B. Badger for many years. We were boys together. I knew the family. I have often seen his mother, but I don't know as I ever spoke to her. I used to meet her and her family at church. I knew Daniel as early as the year eighteen hundred and seventeen. I was not related to either of the parties in any way.

3. To the third he says, I did not marry any daughter of his.

4. To the fourth he says, I was never present at any such conversation.

5. To the fifth he says, I know nothing about any payments of money.

6. To the sixth he says, I never heard anything but what she was in the enjoyment of good health. I used to see her frequently at church.

7. To the seventh he says, they lived in Broad street when I first knew them. Mrs. Ann Badger's husband was then living. I knew him by sight. I had seen him frequently at meeting, and met him in the streets. She lived there a number of years. I think her husband died there. All her children, to the best of my knowledge, then lived at home. They were considered as a family well to do, and made a good appearance in the world.

8. To the eighth he says, I know nothing in regard to this.

9. To the ninth he says, I know nothing of the subject of this interrogatory.

10. To the tenth he says, I only can add that Daniel was a young man of industrious and economical habits, and of correct deportment.

And in reply to the cross-interrogatories in said commission contained, he replies:

Cross 1. To the first he says, I am not.

Cross 2. To the second he says, I have stated no such conversations.

Cross 3. To the third he says, I have never said so; I know nothing about it.

Cross 4. To the fourth he says, I have not, to my knowledge.

Cross 5. To the fifth he says, I have not so testified.

Cross 6. To the sixth he says, I don't know anything about the internal economy of their house. I don't know that I was ever inside the house.

Cross 7. To the seventh he says, I have spoken of no such payments.

230 Cross 8. To the eighth he says, I answer no, to both branches of this interrogatory.

Cross 9. To the ninth he says, I did not.

Cross 10. To the tenth he says, no, sir.

Cross 11. To the eleventh he says, no, sir.

Cross 12. To the twelfth he says, no, sir.

Cross 13. To the thirteenth he says, I never met Daniel Badger at his mother's house to my recollection. I have never known anything of this matter of my own knowledge.

MOSES POND.

I, Chas. P. Curtis, jr., U. S. commissioner, hereby certify that by virtue of the foregoing commission I caused to appear before me on the eighth and ninth days of October last past, Edward J. Jones and Moses Pond, the witnesses in said commission named, and they, having been first duly cautioned and sworn to speak the whole truth, gave the foregoing answers to the several interrogatories and cross-interrogatories in said commission contained, which answers I wrote down in their presence, and they signed the same in my presence, and in all particulars I followed the directions contained in said commission.

In witness whereof I have hereto set my hand this fourth day of November, A. D. 1861.

CHAS. P. CURTIS, JR.,
U. S. Commissioner.

CIRCUIT COURT UNITED STATES,
Massachusetts District, ss:

JAMES B. BADGER
vs.
DANIEL B. BADGER *& al.*

It is agreed that the time for taking the testimony be deemed as now closed in this case, and that publication thereof take place this day. It is understood that the depositions and papers filed by the respective parties in a former suit of Badger and *al. vs.* Badger and *als.*, are to be treated and deemed as having been taken and filed in the present suit.

March 28th, 1862.

JAS. B. ROBB,
Sol'r for Pl'ff.
E. MERWIN,
Sol'r for D. B. Badger.

233 UNITED STATES CIRCUIT COURT,
District of Massachusetts.

AUG. H. BADGER *et al.*
vs.
DANIEL B. BADGER *et al.* } In equity.

The respondent Badger files the following objections to the cross-interrogatories filed by the complainant to Joseph B. Badger, a witness examined by the respondent:

To the 9th cross-int. Because it is irrelevant and immaterial, and calls for the statements of third persons not made in the respondent's presence.

To the 10th cross-int. Because it calls for the declaration of the complainants, or some of them.

To the 11th and 12th cross-ints. For the same reason, and because it is irrelevant and incompetent.

To the 29th, 30th, and 31st cross-interrogatories. Because the same are irrelevant, immaterial, and incompetent.

By E. MERWIN, *his Solicitor.*

234 CIRCUIT COURT UNITED STATES,
District of Massachusetts, ss:

A. H. BADGER *et al.*
vs.
DANIEL B. BADGER & *al.*

Interrogatories filed by said Daniel B. Badger to take the deposition of Joseph Badger, of Milton, in the State of Massachusetts, to be used in behalf of the respondents:

1. Please state your name, age, residence, and occupation. Where did you reside in the city of Boston, if ever, and during what period?

2. Are you related to the respondent, Daniel B. Badger; if so, how?

3. Were you and the said Daniel B. administrators of the estate of your deceased brother, Daniel Badger; if so, at whose request, if of any one's, did each of you act as such? State fully.

4. Please state whether or not you and the said Daniel B., as administrators aforesaid, sold, under license, certain real estate of said intestate, then known as the Distil-house square, the North Federal court, and Broad street estates; if yea, state whether at public or private sale. If at public sale, who was the auctioneer and who were the purchasers.

5. Please state what sort of a price, in your judgment, at the time, the said estates respectively brought.

6. State whether or not said sales were genuine or otherwise, and for whose benefit they were made.

7. State how said auction sales were conducted, and what efforts, if any, were made by either yourself or said Daniel B. to secure or prevent a fair price at said sales.

8. State whether or not said administrators, or either of them, previous to or at said auction sales, made any agreement or understanding with the said Gillpatrick or the said Hart, or with any one else, whereby the said Gillpatrick or Hart were to bid in said estates, or either of them, for the benefit either of yourself or the said Daniel B., or anything to that effect; if so, please state it fully.

9. If there is anything within your knowledge tending to impeach the validity and good faith of said auction sales, or either of them, or

the conduct of the said Daniel B. Badger, in reference thereto, please state the same fully.

10. When, for the first time, if ever, did you hear any complaints, respecting either of said auction sales, or the conduct of the said Daniel B. relating thereto?

11. Were said auction sales advertised, and whether or not said sales took place at the times advertised?

12. Did you or not know of the purchase by said Daniel B. Badger, from the said Daniel Gillpatrick, and the said Wm. P. Hart, of
235 the estates bought by them at or about the time of their conveyances to said Daniel B. Badger, and whether or not said conveyances were known to the mother and brother and sisters of the said Daniel B. at or about the same time; if yea, please state whether or not you knew of or heard any objections made to the purchase of either of said estates by the said Daniel B. as aforesaid.

13. Please state whether there was any delay by said administrators before selling the real estate of said intestate, and if so, what was the reason of said delay, and by whose advice, if any one, it was made?

14. If in answer to the preceding interrogatory you have said that the administrators delayed the sale on account of the depression of the price of real estate, and in the hope of getting a higher price thereof, please state whether or not there had been any perceptible improvement in this respect, and what was the condition of the market at the time said estates were sold by you.

15. Please state whether or not the estate in North Federal court, purchased by said Gillpatrick, was not the same in which the widow's dower had been assigned; and if yea, how long did said widow survive; and please state particularly whether the price at which the reversion therein was sold to said Gillpatrick, was, or was not a reasonable price therefor; what was the value of said estate at that time, free from all incumbrances, and at what sum was it appraised.

16. Please state whether or not it was known to the heirs-at-law of said Daniel Badger, the present complainants, at what price said estates had been sold to said Gillpatrick and to said Hart; where did they reside at the time of said sale; whether or not you heard any complaint or objection in reference to said price from them or either of them.

17. Please state what you know, if anything, in reference to an allowance by the judge of probate, to the said Daniel B. Badger, of the sum of $1,309 in the account of the administrators.

18. Please state whether said administrators, or either of them, charged or received any commissions for their services in collecting the rents, superintending the repairs, or paying the debts of said estate, and if any, how much.

19. Please state for what price the estates known as the Broad street and Distil-house square estates were sold, and how said prices compared with the value of said estates, after deducting any incumbrances thereon, and at what sum were they appraised.

20. Please state who was the auctioneer who sold the Distil-house

square property; what is his condition of mind at the present time, if living, whether or not he is competent to testify.

21. Please state whether the sale of said Distil-house square property, as advertised—please examine the printed exhibit hereto annexed, say what the same is.

26. If you say that it is the advertisement of said auction sale, please state whether or not the sale took place according to
236 the notice given thereof, and who wrote, and cause to be inserted said advertisement.

By E. MERWIN,
Solicitor of Respondent.

Administrators' Sale of Real Estate.

By order of the supreme judicial court, will be sold at public auction the following described real estate, late the property of Daniel Badger, deceased, viz :

At Lynn, on Friday, the 16th of July, at 5 o'clock p. m., all the right and title to the following described estate, containing about one acre, with the building thereon, situated southerly by General hill, so called; E. and N. by Thomas Bowler's, and westerly by Breed's estate. Said estate is undivided.

Also, at Boston, on Tuesday, the 20th day of July, at 11 o'clock, a large lot of land, with the buildings thereon standing, situated in Distil-house square, bounded on Distil-house square about 60 feet; northwest on Tidd's estate about 60 feet; northeast across said land, about 60 feet; southeast on Utley's estate, about 60 feet, be all the measurements more or less. The estate has a double wooden house, for two families, as also a small one thereon, with a well of pump water, it being an excellent chance for a building lot.

Also, at 5 o'clock p. m., at Cambridgeport, a three story brick house, with barn, land, and outbuildings, in a block of ten houses, called First Row, bounded on the street 24 feet, in depth about 140 feet, with a good garden spot and pump of excellent water. The house is large and convenient, and in a pleasant and healthy situation.

JOSEPH BADGER,
DANIEL B. BADGER,
Administrators.

237 Circuit court Massachusetts district.

A. H. BADGER & *al.*
vs.
DANIEL B. BADGER *et al.*

The plaintiffs object to the issuing of a commission to take the deposition of Joseph B. Badger, because he is not a competent witness, by reason of interest.

And not waiving the same, objects further as follows, to wit :

To the 3rd interrogatory, because it is leading, and because it

assumes a fact to have been proved, which has not been proved, and because it is immaterial to the issue, whether he or said Daniel B. was or not requested to act as administrators.

To the 4th interrogatory, because it is immaterial what sort of a price the estate referred to brought.

To the 6th interrogatory, because it is leading, and because it calls for the opinion, conclusion or inference of the witness, instead of facts.

To the 7th interrogatory, because it is leading.

To the 8th interrogatory, because it is leading, and so far as it relates to any agreement or understanding between the witness and said Hart or Gilpatrick, it calls for a statement that is immaterial to the issue.

To the 9th interrogatory, because it calls for the opinion of the witness.

To the 11th interrogatory, to the first part of this interrogatory, because the advertisement itself is the only proper evidence.

To the 15th interrogatory, to so much as inquires whether the price for which the estate therein referred to was sold, was or was not reasonable, because it is immaterial; and to so much as asks for a statement of the sum which it was appraised, because the report of the appraisers is the only proper evidence of the fact.

To the 17th interrogatory, because the record of the probate court is the only competent evidence upon the subject inquired about.

To the 19th interrogatory, because the facts inquired about are not material to the issue.

To the 22d interrogatory, because it is leading, so far as it inquires whether the sale referred to took place according to the notice given thereof.

And not waiving the above objections or either of them, propounds the following cross-interrogatories, *De bene esse.*

1st cross. Where you present at the sale of the Distil-house square estate? At what hour in the day were you there; give the names of the persons whom you saw there?

2d cross. Were you present at the sale of the North Federal
238 court estate. If yea, where did it take place; at what hour in the day were you there. State the names of the persons whom you saw there, or such of them as were known to you by name?

3rd cross. Were you present at the sale of the Broad street estate. If yea, where did it take place; at what hour in the day did you arrive there, and when did you leave. Did the sale take place inside or outside of the building. State the names of such persons present as were known to you by name.

4th cross. State who acted as the auctioneer in the sale of the North Federal court and Broad street estate?

5th cross. Was he a licensed auctioneer in the city of Boston; where was his place of business?

6th cross. Did you employ him to sell these estates, or was he employed by Daniel B.?

7th cross. *De bene.* If, in answer to the 7th direct interrogatory,

you have stated that efforts were made by either yourself or Daniel B. to secure or prevent a fair price at said sales. State whether you have stated all that was said or done by either of you for that purpose. State whether deeds were made in conformity with the interest or portion of the estates struck off to the bidder.

8th cross. *De bene.* If, in answer to the 8th interrogatory, you have stated that said Daniel B. made no agreement or understanding at or previous to said sales at auction with Gilpatrick or Hart, to bid in said estate or either of them for the benefit of Daniel B., state how you know no such a agreement was made, or understanding had between them.

9th cross. Did not Mrs. Ann Badger complain to you of the conduct of said Daniel B. in the settlement of the affairs of the estate, and beg of you, for the sake of her children, to interfere for the protection of her and their interests, or anything to that effect; if yea, when?

10th cross. Did not the children, or some of them, particularly Almira A., complain to you of the conduct of the brother, substantially as in the preceding interrogatory, or say something to that effect, and what?

11th cross. Did not the mother or the children, or some one or more of them, ask you for information in relation to the doings of the administrators and their accounts, and when and how often?

12th cross. Did you not reply that you left the matter to Daniel, or to that effect?

13th cross. *De bene.* State how often such estates, and each of them were advertised—annexed to your answers, copies of each advertisement. State in what papers the same were published, and the date of such publication.

14th cross. If, in answer to the 12th direct interrogatory, you have stated that the purchase of the estates therein referred to by the said Daniel B. was known to the mother and brot hers and sisters, state how you knew it. State particularly to whom it was known;
239 are you willing to swear that no objections were made by either of them.

15th cross. If, in answer to the 14th direct interrogatory, you have stated that there was an improvement in the condition of the market, as the time when the estates were sold compared with a previous time, state fully your reasons for having so answered; what was the condition of the market at the time the Distil-house square estate were sold, compared with the preceeding five years; how did the condition of the market in the spring of 1831 compare with the same five years; give your reasons for your answers. State fully your means of judging on this subject.

16th cross. If, in answer to the 16th direct interrogatory, you have stated that the heirs-at-law knew at what price the estates had been sold to Hart and Gilpatrick, state when and how you knew that they knew it. State fully what estates you refer to.

17th. If, in answer to the 18th direct interrogatory, you stated whether the administrators charged or received any commissions for

their services in collecting rents, &c., state fully and annex an account to your answers of the rents collected by you or by the said Daniel B., including the rents received for the Distil-house square estate, of whom and when received. State what repairs were made, and what debts were paid by you, or each of you. Set forth each item with names, dates, and the nature of the debt paid, and when it accrued, and when it was paid.

18th cross. What incumbrance was there upon the Distil-house square estate when it was sold. State particularly.

19th cross. *De bene.* If you undertake to state the condition of mind of the auctioneer who sold the Distil-house square estate, as to his competency to testify, state how you are enabled to testify on the subject; what are your means of judging or forming an opinion?

20th cross. Did you not hear Daniel B. Badger ask his mother to allow him to administer upon the estate, and tell her that her household cares were sufficient for her, without taking upon herself the trouble of administering upon the estate, or something to that effect? State what was said upon the subject, if anything.

21st cross. State what was done by you as administrator; each and every act as near as you can remember; what rents did you collect personally; what repairs did you superintend; what debts did you pay. State fully.

22nd cross. State whether or no the North Federal court estates were advertised to be sold at auction on a day previous to the 12th of March, 1831, and whether or no they were put up at auction and struck off to any person, and to whom, and when. State what was done at said sale; who was the auctioneer?

23rd cross. State whether both estates were not sold on the same day, and whether the North Federal court estate was not sold first.

24th cross. Was not the Broad street estate struck off to William P. Hart; if not, to whom was it so struck off at that sale; what
240 portion of it was sold, was it not one fifteenth part of the interest in the reversion; what sum was bid for it; was it not struck off to said William P. Hart for three hundred and eighty-four dollars or thereabouts?

25th cross. Did you make, execute or sign any deed of the same to said Hart; if not, why not?

26th cross. How many deeds of the Broad street estate did you make or sign; did you not make or sign at least two; when and to whom were they made, *were they made;* were they not both to William P. Hart?

27th cross. Did not William P. Hart bid at the sale of the North Federal court estate also, which took place previous to the 12th of March, 1831.

28th cross. Did you give Mrs. Ann Badger or either of her children any notice that the sales of the Broad street and North Federal court estates were to take place. Do you not know that they had no notice thereof. Did she not, or either and which of the children so tell you?

29th cross. Did not Mrs. Badger, the widow, bid off the North

Federal court estate at the sale referred to previous to the 12th March, 1831, for the sum of four hundred dollars or thereabouts, or what sum. Did not William P. Hart also bid at that sale; was he not in consultation with Daniel B. while the sale was progressing?

JAS. B. ROBB, *Sol'r for Pl'ffs.*

Circuit Court United States.

MASSACHUSETTS DISTRICT, *ss:*

A. H. BADGER *& al.*
vs.
DANIEL B. BADGER *& al.*

Additional cross-interrogatories to be filed and propounded to Joseph B. Badger, a witness to be examined on behalf of respondent Daniel B. Badger.

29th cross. State whether or no Jacob Badger, Thomas Richardson, husband of Ann J. Badger, and Almira A. Badger, opposed the petition of the administrators to the supreme court, for leave to sell in 1830. Did they not refuse to consent thereto. And did not Daniel B. purchase of Thomas Richardson all his interest in the estate, before he signed the paper consenting to the sale?

30th cross. Did not Daniel B. purchase the interest of the
241 said Jacob, or some part thereof in the estate, before he signed the paper consenting to the sales. Did he not sign the consent to the sale after he was paid for the interest conveyed, or agreed to be conveyed, to said Daniel B.; state what you know about it, or was informed by said Daniel B.

31st cross. Did not Almira A. Badger refuse to sign the consent to the sales, until after she was told by said Daniel B. that her brother Jacob and Thomas Richardson had signed the same?

32d cross. Whether or no Daniel B. ever told you that Thomas Richardson and Jacob had objected to the sale, and that he had bought their interests in the estate, and that their opposition was withdrawn, or anything, and what to that effect, or any of the matters herein inquired about, and what?

33d cross. State whether or no William P. Hart boarded with Daniel B. Badger about the year 1830 and 1831, or at any and what time.

JAS. B. ROBB,
Plaintiff's Solicitor.

Answers of Joseph Badger to the interrogatories to him addressed and annexed to the commission hereto prefixed.

1. My name is Joseph Badger, and I am over eighty-five years of age; I reside in Milton, in the State of Massachusetts; I am by trade a pump and block maker; I resided in Boston in Distil-house square till about eleven or twelve years ago.

2. The respondent, Daniel B. Badger, is my brother's son and my nephew.

3. I and the said Daniel B. Badger were administrators on the estate of my deceased brother, Daniel Badger—his family and widow desired me to take the trust with Daniel B. Badger, the oldest son of the family, in whose integrity they had great confidence.

4. The said Daniel B. Badger and myself as administrators sold under the license of the supreme judicial court, and at public sale advertised in the newspapers, real estate of the said intestate, then known as the Distil-house square, the North Federal court, and Broad street estates. The purchaser of the Distil-house square estate was William P. Hart, and he also purchased the Broad street estate. The estate in North Federal court was purchased by Daniel Gillpatrick. The auctioneer who sold the Distil-house square estate was Daniel Hersey. The auctioneer who sold the North Federal court and Broad street estates was Andrew Brown.

242 To the fifth he says, the Distil-house square estate contained two old wooden buildings. I was formerly a part owner of it, and I owned and lived on an estate near by, and I knew the value of real estate in that locality. I considered the price obtained at auction a good one, and the company attendant on the sale expressed fully that opinion. The estate in North Federal court was a small house, and short of five hundred feet of land—it was sold subject to dower, and I considered the price of land a fair one—an adjoining estate of twice the size and free from incumbrances belonging to William Jones, sold at a sheriff's sale for sixteen hundred dollars. The estate in Broad street was an old building, let to Irish tenants, and in my judgment brought a fair price, under the circumstances. That was at the time the opinion expressed by persons acquainted with the estates as to all of them.

To the sixth he says, the sales were genuine and honest in all respects. They were made under the order of the court, and according to it, and for the benefit of the estate of said intestate.

To the 7th he says, the estates were put up by the auctioneers at the time and place advertised—the advertisements were read by the auctioneers, who stated that the estates were sold to pay debts, and would be sold to the highest bidder. Daniel B. Badger and myself exerted ourselves to procure the attendance of bidders, and to encourage bids at the sale, and to obtain the highest possible price.

To the eighth he says, I never made, and I never heard to be made or attempted any bargain with the purchasers or either of them, or any one else, or had or heard of any agreement or understanding for the benefit of any one, or anything to that effect.

To the ninth he says, I never knew or heard of anything tending to impeach the validity of the sales, or their fairness, or the conduct of said Daniel B. Badger in reference to them.

To the tenth I never heard any complaints about the sales, or the conduct of said Badger, until and by the complainants' bill.

To the eleventh, the sales of all the estates were advertised according to the order of the supreme judicial court, and they were sold at the times and places advertised each to the highest bidder on it.

To the twelfth, at the time that Hart and Gillpatrick conveyed to

Daniel B. Badger, I knew the fact and I have no doubt the family did, the situation of the property was a constant subject of conversation in the family, and I never heard any complaints made.

To the thirteenth, there was delay in selling the estates, on account of the low price of real estate generally. The mortgage on the Broad street estate was called for, and we were obliged to sell to settle the estate, but prices were discouragingly low, and at the request of the widow and the members of the family who were of age, and under the advice of William C. Aylwin, esq., we deferred selling for better prices.

To the fourteenth he says, there was no improvement in prices, but the just debts of the estate were called for, and our counsel
243 Messrs. Heard and Alwyn advised us to sell, as there was no appearance of an improvement in price.

To the fifteenth he says, the whole estate in North Federal court was subject to the widow's dower, and sold subject to it—and she survived the sale about forty years, and died aged seventy-three years. I should think the estate, if free of incumbrances, would have sold for not more then eight or nine hundred dollars. It was appraised at eleven or twelve hundred dollars.

To the sixteenth he says, I am of opinion that the widow and the heirs heard the prices obtained, for it was the subject of conversation, together with the affairs of my deceased brother—the family resided most of the time at Boston, and Jamaica Plain. I never heard any complaints made by either of them.

To the seventeenth, the estate did not yield income to support the family, which was large, and Daniel B. advanced money for the purpose—then the judge of probate allowed for the services of the administrators the sum referred to of thirteen hundred dollars, and this was applied to and covered the advances by Daniel B.

To the eighteenth he says, the administrators actually received nothing for their services because their compensation was applied as stated in the preceding answer.

To the nineteenth he says, the Distil-house square estate was appraised at twenty-five hundred dollars. It was sold at twenty-eight hundred and twenty dollars, clear of all incumbrances, and I considered it a good sale. The Broad Street estate was appraised at four thousand dollars, clear of all incumbrances. It was sold for six hundred and thirteen dollars, subject to the widow's dower. I thought the price was a fair one, as it was almost impossible to find a purchaser for an estate so incumbered.

To the twentieth he says, the auctioneer who sold the estate in Distil-house square was Daniel Hersey. He is living and I have seen him lately; he is incompetent to testify from loss of mind.

To the twenty-first, the extract exhibited to me is the advertisement published in the newspapers according to the order of the supreme court, and under which the said estates were sold, according to its purport.

To the twenty-second, the auction sale took place according to the advertisement or notice in the newspaper. The auctioneer caused it to be inserted.

Answers of said Joseph Badger to the cross-interrogatories.

To the first he says, I was with a large company, of whom I remember now only Daniel B. Badger, M. Daniel Hersey, Mr. Heath, and Mr. Brigham. I think the sale was about midday.

To the second he says, I am quite certain I was not at the sale, but I knew of it, and gave directions about it.

To the third he says, I presume I was there, but I have now no recollection of it.

244 To the fourth he says, Andrew Brown was employed.

To the fifth he says, I do not know about his being licensed. His place of business was near Water street, in Boston.

To the sixth he says, we both employed him.

To the seventh he says, he encouraged bids, but I cannot remember now all that was said or done for the purpose. Deeds were delivered according to the purchases.

To the eighth he says, I think I should have known it if such agreement had been made.

To the ninth, I know of no such complaints or any such thing, or of any cause or reason for it. Her only anxiety was that the debts would swallow up the property.

To the tenth he says, I have no recollection of any such thing.

To the eleventh he says, I have no recollection of any such thing.

To the twelfth he says, I do not recollect.

To the thirteenth he says, the advertisements were, I believe, published according to the order of the court. I have now no recollection about it further, and none of the advertisements to annex.

To the fourteenth he says, I know it only by its being the general subject of conversation in the family, and to this I testify.

To the fifteenth he says, I think there was no improvement in the market price, from any previous time up to the sales. My means of information were the inquiries and talk I made with others, and the various ways of forming an opinion.

To the sixteenth he says, I knew it by my conversations with them at various times, as to the estates in Distil-house square, Broad street, and North Federal court.

To the seventeenth he says, I well remember that no compensation was received by the administrators, except as stated before. I have no account that I can annex or obtain without expense, nor can I answer further.

To the eighteenth he says, it was sold clear of all incumbrances.

To the nineteenth he says, I saw him yesterday—he is sick, and his memory is gone, and therefore he is not fit to testify.

To the twentieth he says, I have no recollection or belief that there was any such conversation. I think Mrs. Badger and myself went to the probate court together, without Daniel B.

To the twenty-first he says, I know generally that rents were collected and repairs made, but I have no account or means by which I can state details.

To the twenty-second he says, the North Federal court estate

was advertised for sale at auction, sold at auction, and bid off by Mrs. Ann Badger, widow of Daniel Badger, deceased, for about three hundred dollars. The administrators were afterwards notified that she refused to take the deed, and then, by the advice of our counsel, it was sold, after being advertised, for a less price than before.

To the twenty-third, no other estate was sold the day the widow bought the estate in North Federal court, that I recollect.

245 To the twenty-fourth, no sale of fractional parts of the Broad street estate ever took place.

To the twenty-fifth, I presume I signed the deed for what Mr. Hart purchased.

To the twenty-sixth, one only.

To the twenty seventh, I cannot tell.

To the twenty-eighth, I never purposely kept notice of the sales from any one. I think Mrs. Badger and the children had notice. I never heard any complaint or statement that they had not.

To the twenty-ninth he says, Mrs. Badger bid off that estate at auction, previous to March 12th, 1831. The price I do not remember.

Answers of said Joseph Badger to the additional cross-interrogatories.

To the twenty-ninth, there was much trouble with the widow and her daughter Ann, about her part of the rent, which the widow had expended in support of the family. Ann left her mother's house about 1826. There was also some trouble about a needle-work sampler. I knew of nothing more.

To the thirtieth he says, I know nothing of the papers, except that they were signed by all the heirs. Jacob had taken the guardianship of Augustus H. Badger, when he was over fourteen years of age, and made much difficulty in settlement with the mother, who had been previously guardian. He claimed counsel.

To the thirty-first he says, I do not remember that she refused to sign, but I know they all gave their assent. I don't know what Daniel told Almira.

To the thirty-second he says, I have no recollection of such conversation.

To the thirty-third, I never knew of his boarding with him.

JOSEPH BADGER.

DISTRICT OF MASSACHUSETTS, *May* 5, 1858.

Personally appeared before me the above-named Joseph Badger, who, after being duly cautioned and sworn to speak the truth, the whole truth, and nothing but the truth in relation to the cause for which his deposition was taken, was by me examined apart, on the interrogatories and cross-interrogatories annexed to the commission hereto prefixed, and his answers thereto, written down by me in his presence, were by him subscribed in my presence, as and for his deposition, taken by authority of the said commission hereto prefixed, and for the cause therein specified.

EDW'D G. LORING, *Comm'r.*

246 UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record, and of all the proceedings in the cause of James W. Badger *and al. vs.* Daniel B. Badger *and als.*, in this court, in equity determined, including all the evidence filed therein.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Boston, in said district, this twenty-third day of December, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh.

[L. S.]

H. W. FULLER, *Clerk.*

Filed January 17, 1863.

1059

SUPREME COURT OF THE UNITED STATES.

No. 111.

JAMES W. BADGER, APPELLANT,

VS.

ERASTUS B. BADGER, AND AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

PLAINTIFF'S POINTS AND ARGUMENT.

1061

SUPREME COURT OF THE UNITED STATES.

December Term, 1864.

JAMES W. BADGER, PLAINTIFF AND APPELLANT,

vs.

ERASTUS B. BADGER, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

PLAINTIFF'S POINTS AND ARGUMENT.

THE Bill of Complaints was originally filed against DANIEL B. BADGER and JOSEPH BADGER, Administrators, and SAMUEL D. PARKER, and the CITY OF BOSTON.

Daniel B. Badger deceased, without filing an answer. Joseph Badger died shortly after filing his answer.

A Bill of Reviver was filed against Erastus B. Badger, the Executor, and the sole heir of the said Daniel B.

The present defendants therefore, are Erastus B. Badger, Samuel D. Parker, and the City of Boston.

The plaintiff in his bill alleges, that, in the month of September, 1819, Daniel Badger, his father, died, leaving real and personal estates, of which administration was necessary; that, at the time of his death, there were living Ann Badger, his widow, and ten children, to wit: the said James W., the plaintiff, and David J. Badger, Augustus H. Badger, Jacob Badger, Almira A. Badger, Mary H. B. Badger, now the wife of Benaiah P. Sturgis, Eliza M. Badger, now the wife of Moses M. Smith, and Ann J. Badger, now the wife of Thomas Richardson, and Alfred C. Badger, all then under the age of twenty-one years, and the said Daniel B. Badger.

That on the 29th day of September, 1819, the said Daniel B. Badger

and Joseph Badger, also of said Boston, were appointed administrators of said estate.

That among the real estates left by his father, were the estates severally known as the Distil House Square Estate, Broad Street Estate, and North Federal Court Estate, which are fully described in the bill.

That the Broad Street, and North Federal Court Estates, in April, 1827, were set off to the widow of Daniel Badger, and mother of the plaintiff, as and for her dower, in the real estate of her husband.

That the said Daniel B. Badger, claiming to act under the Laws of Massachusetts, and the license of the Supreme Court of that State, granted at the March Term thereof, 1830—offered for sale in July of that year, the Distil House Square Estate, at public auction, and the Administrators made a conveyance to one William P. Hart, who bid off the same for said Daniel B. Badger, pursuant to an agreement previously made with him, and that said Hart very soon after conveyed the said Estate to the said Daniel B. Badger, pursuant to said agreement.

That in March, 1831, the said Daniel B. Badger offered for sale, at public auction, the North Federal Court Estate, and the Broad Street Estate, or the reversion upon the determination of the life estate of the widow, that the former was struck off to one Daniel Gilpatrick, for said Daniel B. Badger, pursuant to an agreement previously made with him by the said Daniel B., and that the latter was struck off to said William P. Hart for said Daniel B., pursuant to an agreement previously made with him, and that conveyances of these estates were made by the said Administrators to the said Hart and said Gilpatrick, in said month of March, who thereupon severally conveyed the same to the said Daniel B.

That on or about the 5th of May, 1830, Thomas Richardson and Ann J., his wife, one of the daughters of said Daniel Badger the intestate, conveyed all their interest in the aforesaid Estates, being one-tenth to said Daniel B.

That on or about the 15th day of June of the same year, Jacob Badger,one of the sons of said Daniel Badger, the intestate, conveyed all his interest, being one-tenth in the North Federal Court, and the Broad Street Estates, to the said Daniel B.

That ever since the pretended conveyances to him in July of 1830, as aforesaid, and until the time of his decease, he, the said Daniel B., had been in the receipt of all the rents and profits of the Distil House Square Estate, and that ever since September 1855, the time of the decease of the widow Ann Badger, and until his decease, the said Daniel

1063

B. had been in the receipt of all the rents and profits of the estate in Broad Street as aforesaid, and that since his decease, the said Erastus B. Badger has received all the rents and profits of both of the aforesaid estates.

That on or about the 26th of September, 1836, the City of Boston took possession of the North Federal Court estate for the purpose mentioned in the bill, and that on or about the 5th day of January, 1856, the said City, with full knowledge of the premises and of the rights of the plaintiff herein paid to said Daniel B., the sum of twenty-five hundred dollars, for and in consideration of a conveyance of the premises so taken as aforesaid, and refused to pay the plaintiff anything on account of his alleged interest therein.

That on or about the 1st day of July, 1854, the said Daniel B. conveyed the Estate in Distil House Square, to the defendant, Parker, in mortgage, nominally to secure the payment of six thousand dollars in three years, and on the 14th of February, 1855, conveyed to him, also, in mortgage, the Broad Street Estate, to secure the payment of one thousand dollars in three years. That at the time of these conveyances, and for a long time before, the said Parker well knew of the rights of the plaintiff and his co-heirs, and that said Daniel B. was not possessed of any beneficial interest in those estates, beyond four-tenths of the last mentioned estate, and one-tenth of the former, being the interest acquired by him as one of the heirs of said intestate, and by purchase of his co-heirs, as set forth in the bill.

The bill further alleges that, at the time the alleged authority or license to sell was granted by the Supreme Court of Massachusetts, there were no debts due from the estate of the intestate, for the payment of which the real estate could be lawfully sold.

The debts alleged to be due having been long before that time barred by the Statutes of Limitations, as against Administrators, as well as the General Statutes of Limitations of the Commonwealth of Massachusetts.

Neither these debts or the balance alleged to be due the Administrators created a lien on the real estate.

And therefore the license of the Court and all the proceedings of the Administrators under it are null and void, and that the plaintiff and his co-heirs were not thereby divested of their interests in those estates, and they remained tenants in common with the said Daniel B. Badger of those estates, and as he had collected and received all the rents and profits, the plaintiff is entitled to maintain this bill for an account, and

for his share of the rents and profits, as one of the heirs of the intestate, and by transfer of the interests of his co-heirs, as set forth in the bill.

But even if the license to sell was valid, and the administrators acquired thereby authority to sell these estates, the administrator, Daniel B. Badger, could not lawfully become the purchaser of them at the sale, as against the heirs, and he having bid them off through his agents, Hart and Gilpatrick, the sale may be avoided by the heirs, and he holds the estates as Trustee for them, to the extent of their respective interests therein, and the plaintiff may maintain this bill both for the account and the conveyance prayed for, unless the plaintiff is barred of all right by the lapse of time or the Statutes of Limitations.

Therefore we say,

I. The sales were void because the court had no authority to grant the license under which they were made. And as the validity of the acts of the administrators and the rights of the parties are to be determined by the laws of the Commonwealth of Massachusetts. It is respectfully submitted that the following decisions of the Courts of that State are directly in point, and fully establish that proposition.

And 1st as to the debts mentioned in the additional list of debts filed by the administrators in the Probate Court in 1827.

Which were two notes of One Thousand dollars each due to J. Amory, originally given to U. Cotton (see Adm'rs 3d Acct.) dated the 1st day of November, 1815, payable one in five years, and the other in six years from date. They were both barred by the General Statutes of Massachusetts in six years from the time they were payable, one, therefore in November 1826, and the other in November 1827, more than two years before the license was granted. As no suit had been brought against the administrators, the estate was not only not liable for them, but it would have been the duty of the administrators to plead the Statute of Limitations, if the Creditors had sought to recover them by suit.

But they had been long before that time, barred by the Statutes of Limitations against administrators.

The statute of Mass. 1788, chap. 66, Sect. 1, provides that "no Executor or Administrator after having given notice of his appointment as provided, shall be held to answer to the suit of any creditor of the deceased, unless it be commenced within four years of the time of his giving bond," with certain exceptions not affecting this case.

There is no pretence that the bond was not duly filed before entering upon their trust, and as they filed their Inventory on the 18th October, 1819 (alleged in the bill and admitted by the answer) it must be presumed that their bond had been filed before that time.

These debts therefore were barred by that statute after October 1823.

The Statute of Mass. 1783, chap. 32, Sect. 1, provided, that "where the goods and chattels, rights and credits in the hands of an executor or administrator shall not be sufficient to pay the debts of the deceased, with the charges of administration, his real estate or so much thereof as may be necessary shall be sold for that purpose, by the executor or administrator upon obtaining a license therefor," &c.

These Statutes have been in force ever since that time, and were the only authority for the proceedings of the administrators in this case.

And by the decisions of the Supreme Court of this State, it will clearly appear that long before the sales took place, the estates had ceased to be assets in the hands of the administrators for any purpose.

In the case of Heath *vs.* Wells, 5 Pick. 140, decided in 1827, the Court say:

"A license granted to an administrator to sell real estate of the deceased to pay a debt barred by the 'Statute of Limitations' respecting executors and administrators is void."

And on page 145:

"But in the case under consideration, it appears that the Court, granting license to the Administrator, had no jurisdiction of the subject-matter, for if the Administrator had no right to sell, the estate not being assets in his hands, the Court had no cognizance of the case, and the license was merely void. It was not a case for deliberation or decision. The license could give no authority to the Administrator, who might as well have been licensed to sell the lands of a stranger."

And this rule has been recognized and uniformly upheld in other and later cases. In Lamson *vs.* Schutt *et al.* 4th Allen, page 359, decided in 1862—it was held that:

"An Administrator cannot maintain a petition for leave to sell real estate, for the payment of debts of his intestate, if there are no debts due from the estate, which can be enforced at law."

And on page 361: The Court say, "To make an Administrator's sale valid, his right to sell and the license of the Court must coincide. But his right to sell depends wholly upon the liability of the estate to be taken and appropriated to the payment of debts, which can be enforced by an action at law. And where there are no such debts to be paid, a license to sell must be merely void." Again on same page, in commenting further: "Thus where the executor of Pemberton's Will gave notice of his appointment, as the law directs, and he lived and

continued to administer the estate more than four years from the time of his appointment, it was held that the lien of the Creditors on the real estate was discharged, and that being thus extinguished, it did not revive upon the subsequent appointment of an Administrator *de bonis non.* And it was accordingly determined that a license to sell real estate to pay a judgment recovered against him on account of a debt which was barred by the Statute of Limitations as against the Executors, was merely void: for if there was no lien upon the estate for debts, it was not assets in the hands of the Administrator, and the foundation of the petition upon which the license was granted failed, and the Court had no jurisdiction of the matter."

"It is manifest that a sale under such an unreal authority could have no effect to divest the heirs of their title, or to transfer it from them to a purchaser."

These decisions ought to be decisive upon this question. But it may be insisted upon the other side that, the Administrators, by filing the additional list of debts in 1827, and by the recitals in the petition for leave to sell, revived the claim of the creditors against them, and thereby bound the estate and the heirs.

If this is not already answered by the fact that even a judgment against the Administrator, founded on a debt barred by the statute, did not revive the lien, it is fully and completely answered by the Court in the same case, on page 360.

Merrick J., in delivering the opinion, further says:

"It has been uniformly held that although an administrator may avoid the effect of the General Statute of Limitations by an acknowledgment of the debt, such an acknowledgment, or even a promise to pay it, does not obviate the force of that which limits the time within which an action can be brought against him in his official capacity."

In the case of Scott *vs.* Hancock, 13 Mass. 164, it is said by the Court, "that the general effect of this law is to discharge the lien of the creditors on the estate in the hands of the heirs after the expiration of four (now two) years, and that it is the duty of the administrator to plead this Statute of Limitations in bar of any action brought against him after the time prescribed. The heirs at law have a right to insist that he shall plead it, for he stands in a place of trust, and in executing it is to act with fidelity for their protection." This doctrine has been repeatedly and uniformly asserted and upheld.

Baxter *vs.* Penniman, 8 Mass. 133.
Brown *vs.* Anderson, 13 Mass. 201.
Thompson *vs.* Brown, 16 Mass. 172.
Emerson *vs.* Thompson, same 429.

And the Court, in the above cited case, further says, on the same page, 360:

"If therefore the license which is prayed for in this petition should be granted and the real estate, of which the intestate died seized, should be formally sold in pursuance of such supposed authority, the purchaser could acquire no title under the sale."

But it may be contended on behalf of the defendant that the Court in 1830 had authority to license the sale of the real estate, at least to the extent of the balance due them—$2,456 32, upon settlement of the account filed on the 10th September 1827. But upon examination of that account (page 161) it is clear that, that balance was made up of debts alleged to have been paid by them before that time, viz:—

Mrs. Farmer's note and interest, - -	$1,246 62
Mortgage on Lynde Street estate, - - -	467 75
J. Amory's note, - - - - -	1,000 00
Interest on same note, - - - - -	378 30
" " " - - - - -	360 00
	$3,452 67
And other debts amounting to about - -	2,000 00
In all - - - - - - -	$5,452 67

All these debts would have been barred by the Statutes of Limitations against Administrators, as early as November, 1824. It does not appear whether they were paid before or after that time.

Clearly no lien existed in favor of the administrators for reimbursement for debts paid, either voluntary or otherwise, after they had been barred by the statute.

And we submit, it makes no difference when the payments were made, the question is, whether the lien exists at the time of the application for license to sell for that purpose. The Administrator stands in no better position before the Court, than he would if the debt had not been paid by him — why should he? The statute makes no distinction. The real estate, by the terms of the statute, is assets only for the payment of debts. Now, if the debt was extinguished by the payment by the Administrator, so that it no longer existed as a *debt* — the lien would be gone. But the more reasonable and liberal view of the subject is that the Administrator by such payment, is substituted for the Creditor, as to his rights of lien, &c., and this doctrine is founded not only upon general principles long recognized, but it has

been so expressly held, by the Supreme Court of Massachusetts. In the case of *Exparte* Allen, Petitioner, &c., 15 Mass. 58, which was a petition by an executor for license to sell the real estate of the deceased to reimburse himself for the amount of debts paid by him. The Court refused to grant the license, and among other things said — on page 62: "We think the Executor in the present application stands in no better light than he would if the debts had not been paid by him, and he was now claiming to sell the real estate in order to pay those debts to the several creditors themselves. If it be true that an Executor paying debts beyond the personal estate stands in the condition of the Creditor, there is no pretence for the present claim, for the creditor himself could not have the remedy sought for, nor any other legal mode of satisfying his debt out of the lands of the testator."

Though the Court in that case intimate that there might be an exception to the doctrine in a certain case. Yet that is not this case, and indeed, in the case mentioned, as an exception, the Court further say, that "even in such a case, an executor or Administrator claiming license to sell, to reimburse himself, would be held to make his application within a reasonable time after the debts should have been paid by him."

Now what are the facts in this case? The Administrators second account was filed in September, 1827, eight years after their appointment, and the application for leave to sell, on which the order was granted, was not made until nearly three years thereafter.

Upon these authorities it is manifest, that the Court had no jurisdiction in the matter, and for these reasons the sales were void, and neither Daniel B. Badger or any other person can claim any benefit under them.

The defendant, Badger, insists in his answer, that, the guardian of the plaintiff and those he represents, consented to the sale, and in writing, requested the Court to grant the license prayed for.

But surely it will not be contended in this Court at least, that even if true, this would give the Court jurisdiction.

This Court has uniformly held that consent of parties can never confer jurisdiction.

But the consent relied upon by the defendant is that of Guardians. The Statutes of Massachusetts, have carefully guarded the rights of wards against the acts of their Guardians; no authority can be shown in support of such a doctrine as contended for by defendant.

The general rule is laid down in Kent's Commentaries, p. 228, in these words: — "The guardian of the estate has no further concern

with, or control over the real estate, than what relates to the leasing of it, and the reception of the rents and profits." And this is the rule in Massachusetts, unless special authority is given to the guardian by the Court of Probate. *See Statutes of Massachusetts.*

In the case of Jones, *et. ux. vs.* Brewer, 1 Pickering, page 317; the Court says,—"It is a well settled general principle that a guardian cannot by his contract bind the person or *estate* of his ward." The same was held by the Court in the case of Foster *vs.* Fuller, 6 Mass. 59.

The doctrine contended for would be subversive of all laws for the protection of wards, and will not be entertained by this Court for a moment.

But we say further that Ann Badger, guardian of Almira, Augustus, Alfred, Eliza, Mary and James W., the plaintiff, did not consent to said order as alleged. She may have submitted to it under the belief that she could not prevent it, but she did not consent to it, and the testimony in the case proves this beyond all doubt.

The alleged signature to that paper was not made by her.

The witness, M. M. Smith, on page 130, in answer to the 13th direct interrogatory, says,—"I am acquainted with her (Ann Badger's) signature, as much as a person could be; she was not in the habit of writing it often; I have seen the petition spoken of several times; I saw the petition in the Clerk's office several times during the last six months. *The signature is not in her hand writing;* she was not capable of writing so handsome a hand."

E. M. Smith on page 141, in answer to the 18th direct interrogatory says,—"I am familiar with my mother's hand-writing and know her signature well; I have seen the original petition referred to in the interrogatory; the signature thereto, 'Ann Badger,' is not in the handwriting of my mother, and does not resemble the other signatures of her in the Probate office."

Mary H. B. Sturgis, on page 111, in answer to the 19th direct interrogatory says,—"I am familiar with my mother's handwriting and know her signature; I saw the petition mentioned, a copy of which is hereto annexed and marked Exhibit C, on the 23d of May, 1861, in Boston. It certainly was not signed by her and is not in her handwriting."

In view of this testimony, which is all there is in the case upon the

subject, can it be reasonably said, that "the weight of the evidence clearly shows that she either signed her name or authorized it to be placed to the instrument?"

Although Jacob Badger may have signed said petition as Guardian of Augustus, it could not bind or conclude his ward, for in addition to the reasons before stated, it is void, because such act was manifestly collusive with the Administrator, Daniel B. Badger, and in violation of his duty and trust as Guardian. It cannot be seriously contended that he was actuated by worthy motives. They may say that in this he was discharging a moral duty as a son, in thus providing for the payment of his father's debts. But this obligation was not so great, that he was willing to appropriate his own share of the estate for that object. Before he put his name to that paper, he sold his interest in the estate to the Administrator, Daniel B., and what he received for that was the consideration for his consent so given and no other. The moral obligation was not sufficient to induce him to give up his own estate. Ought it to justify him in surrendering the estate of his ward?

However this may be, and whether Mrs. Ann Badger signed the paper or not, it is respectfully submitted that they could not thus divest them of their real estate.

We have thus shown that the Supreme Court had no jurisdiction in the premises, and the order of the Court, or license to sell relied upon by the defendants was, for that reason, void.

II. But further, if the Court had jurisdiction, the order or license to sell was void, because it was obtained by fraud.

We have shown that the Administrators could not be licensed to sell for payment of debts, barred by the Statutes of Limitations, nor for reimbursing the Administrators for advances for the payment of debts.

It is evident, therefore, that if there had been a hearing upon the petition, the license would not have been granted. It appears that leave was granted because of the supposed consent of all the parties interested, including Mrs. Badger as widow and guardian, Jacob Badger for himself and as guardian of Augustus H. and Thomas Richardson and wife in her right.

The order recites in terms.

Thomas Richardson and wife after they had sold and conveyed to Daniel B. Badger, one of the administrators, all their interest in the estate, and in consideration of the sum paid to them, signed the paper consenting to the sale.

So did Jacob Badger, as before shown.

The fact that they had sold out to Daniel B. was concealed from Almira, and she was induced to sign by the false representation that Jacob and her sister had given their consent to the sale. Daniel B. bought their interest to prevent threatened investigation. Both Richardson and Jacob had employed counsel to resist this petition, and it was only to prevent this that Daniel B. paid them for their shares, no other motive can be reasonably suggested, and the evidence shows it.

If these facts had been known to the Court, they would, without doubt, have led to an investigation into the conduct of the administrators, and the grounds of their petition, which must necessarily have resulted in a refusal to grant them the license prayed for, not only as to the interest of Augustus H., but all the rest of the heirs.

The concealment of them was such a fraud upon the Court as to render void that order, at least as against Daniel B. Badger and all others claiming under him, with knowledge of the fraud.

III. There is still another ground upon which we rely to avoid the sale of the Broad Street and North Federal Court estates, and is peculiar to them.

These estates, at the time of the application for leave to sell, were subject to the life estate of the widow, and the heirs had merely the reversionary interest in them, and by the laws of Massachusetts, they could not be sold by the administrators for the payment of debts, without a special license from the Court. A general authority to sell all the real estates was not sufficient to authorize the sale of them.

"Under the early statutes an administrator might, upon special license, therefor, sell a reversion or remainder for the payment of debts even during the continuance of the particular estate."

"But not under a general license to sell the deceased's real estate."

Cases cited in Bennett & Heard's Digest, Mass. Decisions, page 666, sections 176 and 177.

IV. There is, however, another and sufficient reason independent of those already stated, for declaring those sales void, founded upon a principle of law of universal application, recognized and upheld not only by courts of equity, but by courts of law, and enforced by this court in numerous instances. In the case of Michoud *et al. vs.* Girod *et al.*, 4. Howard 503. The rule is stated thus: —

"A person cannot legally purchase on his own account that which his duty or trust requires him to sell on account of another. 'A purchase

by a trustee or *per interposition personam*, of the particular property of which he has the sale, carries fraud on the face of it.'"

"A purchase so made by executors will be set aside."

This doctrine cannot and probably will not be controverted by the learned counsel for the defendants, but they deny that these estates were so purchased by the defendant's testator, Daniel B. Badger. But we submit that the evidence proves, beyond all reasonable doubt, that Hart and Gilpatrick, who bid off these estates at the vendue, were but the agents of Daniel B. Badger, in that transaction.

The Distil House Square estate was offered for sale at auction on the 20th July, 1830, and was bid off by Wm. P. Hart, a relative of Daniel B., and a fellow workman in the blacksmith business with Daniel Gilpatrick, both intimate friends and daily companions of Daniel B., as the evidence shows. The administrators' deed to him was executed on the 23d of July, but not put on record till the 15th of January, 1831 (see page 49.) On the 14th of March following, Hart, by his deed of that date, reconveys to Badger. No money was paid either by Hart to the administrators, or to Hart by Daniel B. This is not denied by the answer, but rather admitted. Daniel B., during the whole time, managed the estate and received the rents. Hart never exercised for a day any acts of ownership, from the time of the auction to the day when he reconveyed to Badger. His answers to the interrogatories show that he knew but little or nothing about it. When asked if he bid off the property, his reply was, "I think I did."

He does not say that he was requested by Daniel B. Badger to attend that sale and bid for him; but what he does say shows it to be true. 'Tis true he says he "has no recollection that anybody requested him to go there to buy the property for anybody;" but the very manner in which he says this proves the contrary.

He is asked by interrogatory 10: "Did you attend said sale at the request of any person. If yea, at whose request?" He answers, with eagerness — "My own. I have no recollection that anybody requested me to go there to buy the property for anybody."

But every fact stated by him tends to prove the contrary. He could not describe the house — could not state whether it was occupied by tenants or not, either before or after the sale, and so on.

There are other facts that should be mentioned in this connection. Hart, in 1830 and 1831, had but limited means, and all he had was in his business. He was a partner with Daniel D. Badger, as Blacksmiths; — by the Assessors' Report (page 159), it would appear that in 1830 and 1831, he was not worth over $500. A man so situated, who

would bid off an estate at auction for his own use or purposes, at a cost of nearly $3,000, would be likely to remember more about it, at any lapse of time than Hart has vouchsafed to tell us. What little he did remember, he told unwillingly, as his answer to the last interrogatory admits.

From the undisputed facts in the case, and the obscure and evasive answers of this witness, there can be but little doubt left on the mind, upon this testimony alone, that he was acting for Badger in that transaction. But we do not rest here; — we have not only the circumstances attending the sales of the other estates, which will be adverted to hereafter, but we have his admission to Jacob Badger that he employed Hart to bid off this estate for him. Jacob Badger, on page 102, in answer to the 15th interrogatory, says: — "About a week after the sale I was in Daniel B.'s shop, and he talked about the sale. He told me, what I knew well before, that he had employed Hart to buy the Distil House Square property for him, and showed me a deed which he had filled up for W. P. Hart. I said to him, 'But you don't intend to deliver that to an irresponsible man like Hart, before you get another deed back to yourself!' He answered, 'No; I calculate to get another deed back from Hart when I deliver this.'"

To the 16th, he says: — "I did know William P. Hart; he was a laboring blacksmith, recently come from New Hampshire, who made no pretensions to having property, and whom nobody supposed had any property. He was related to Daniel B.'s wife, and I believe boarded with Daniel B."

To the 17th, he says: — "I knew Daniel Gilpatrick. He was a journeyman blacksmith; he worked with W. P. Hart, and for Hart. He resided, or boarded, with my brother, Daniel B. Hart, Gilpatrick, and Daniel B., were very intimate, and were together nearly every night at Daniel B.'s shop."

The North Federal Court and Broad Street Estates were offered for sale on the 12th of March, and the former bid off by Daniel Gilpatrick, and the latter by the same W. P. Hart on that day. On the 28th of March, these estates were conveyed by the Administrators to Hart and Gilpatrick, and on the same day, reconveyed by them respectively to Daniel B. Badger. The deeds do not all bear this date, but they were evidently exchanged on that day (see deeds, pp.). The deed from Hart to Badger, was recorded September 28th, 1833, nearly two years and a half afterwards; — the deed from Gilpatrick to Badger was not recorded until May 5th, 1834 — more than three years after the sale. Gilpatrick admits that he was employed by Daniel B. Badger to bid off

this estate for him. In answer to the 6th interrogatory, on page 153, he says: — "The estate described in said deed, was bid off under the following circumstances: I was requested by Daniel B. Badger to attend the auction, and bid on the lot. I did so attend, and the lot was struck off to me. I bid it off with the expectation of conveying it back to Daniel B. Badger. I did not want the lot myself, but bid with the understanding that he was to take it of me, — this was the agreement."

And in answer to the 9th, same page, he says: — "I did so reconvey, according to an understanding, or agreement, as before mentioned."

To the 10th: — "There was nothing paid me in consideration of said conveyance."

And in answer to the 4th cross interrogatory, on page 153, he says: — "I can only say I was asked to go and bid, and did so; I did not go to buy on my own account."

To the 6th cross interrogatory, on page 154, he says: — "I do not remember the conversation, but I conveyed to Daniel B. Badger, according to the agreement, whatever it was. Whatever agreement there was, was made before the sale."

To the 8th direct interrogatory, page 153, he says: — "I was a blacksmith, and employed by Daniel D. Badger and William P. Hart, Blacksmiths."

The testimony of Gilpatrick, stands unimpeached and uncontroverted, and is sustained by every undisputed fact connected with the transaction. The only attempt to affect it is by the answer of William Parker — a witness for the defendants — to the 3d direct interrogatory, on page 187; — if there is any truth whatever in his improbable statement. It shows a design to cover up the real transaction by factitious testimony, and so far from contradicting Gilpatrick, it corroborates him. What contract did he mean "to hold to," if not that which he tells us of himself? If it contradicts any one, it is the defendant, for the answer admits, no money was paid.

An attempt is made by the cross-examination to pervert the facts by creating an impression that the agreement to sell or convey to Badger was not made until after the estate was bid off, but it signally fails. Gilpatrick may falter for a moment under the temptation to screen an old friend, but he manfully and instantly recovers, and positively and emphatically asserts, that "Whatever the agreement was, it was made before the sale;" and, unlike Hart, he discloses the *whole* truth about the matter. When Hart is asked about the sale of the Broad Street Estate, we have the same evasive and obscure answers as before. On pages 157 and 158, he says he attended a sale of some property — he

thinks on Broad Street. He won't say positively that he ever received a deed of it from the Administrators, and the whole tenor of his deposition warrants the inference that he was not acting for himself, but for Daniel B. Badger. But taking all the circumstances together, can there be any reasonable doubt that such was the fact?

Again, there is another fact which has an important bearing upon this question, viz: That Daniel B. Badger "had always entertained the hope that he might ultimately become the owner of these estates." (See the answer of E. B. Badger, page 26).

Was it accidental that they should have been bid off by persons whose means would not allow them to retain them, and who were also his intimate friends and boon companions, and who attended the sales at his request? or was it that he might realize "the hope" which he admitted he had entertained.

A review of his conduct will show that in offering these estates for sale he was but carrying out a settled purpose of long standing to become the owner of them, and that he did not scruple to resort to fraudulent means to accomplish that design.

1st. He procured these estates to be set off to his mother for her dower against her wishes.

Almira A. Badger, in answer to the 18th interrogatory, pp. 88–89, says: "He told my mother the dower was to be set off, and she had better choose the Federal Court and Broad Street estates. She objected to it, and thought she had rather have the Distil House Square estate. She said, Daniel, it was your obstinacy which deprived me of the Lynde Street house as a residence. Your father had it prepared for that purpose before he died. I would like to have my choice now. After that Robert Badger came to the house and told my mother she had better take the Federal Court and Broad Street estates, and she acquiesced."

Jacob Badger, in answer to the 13th interrogatory, page 101, says: "Daniel proposed to have the North Federal Court and Broad Street property set off as her dower. She expressed herself displeased at the proposal, and said that she had wished some arrangement could have been made to give her a house to live in. She said she had requested him to reserve the Lynde Street house for that purpose—to live in. He insisted upon his propositions, and finally succeeded in having that property set off for her dower which he proposed."

Mary H. B. Sturgis, in answer to the 16th interrogatory, page 110, says:—"He told her it was best for her to take Broad Street and North Federal Court property for her dower. She told him she thought it a

pity that she could not have a house fit to live in, and wished the Lynde Street house could have been saved for her. I remember Robert Badger (one of the appraisers, I think,) came in and told mother that he thought it well for her to take North Federal Court and Broad Street property."

E. M. Smith, in answer to the 16th interrogatory, page 141, says: — "He told her he had come down to see her about her dower being set off. He said that the Broad Street house and the North Federal Court house would come the nearest to her proportion of the estate for dower. Mother said, 'I wish I could have had a house to have lived in.' She did not willingly assent to the assignment of dower he proposed, and she said she wished she could have had the Lynde Street house. What she said was, 'I ought to have had the Lynde Street house.' She was reluctant to take the dower he proposed, and wanted a house that could be her home. Daniel then proposed that she should select Robert S. Badger, her nephew, to make partition of dower on her behalf, and I recollect when he called to see my mother about it. He acted as such."

And the sequel will show that in thus encumbering these estates with a life estate in his mother, he was carrying out an ingeniously contrived plan for the accomplishment of his design.

He could never have entertained the hope for a moment of becoming the owner of these estates in any other manner.

It has been shown that his means would not admit of it, and the testimony of all the members of the family show not only this, but that if he had been ever so able to buy, they never would have consented to sell to him.

His statement that "his desire to become the purchaser, and the hope that he might ultimately do so, was participated in by the family," is fully and entirely refuted by the fact that, on the 5th of February, 1831, the day these estates were to be offered for sale, his mother sent an agent to purchase them for herself.

And also the indignation expressed by her when she was informed that he had afterwards sold them again without notice to her.

Mary H. B. Sturgis in answer to the 14th interrogatory, pp. 109–110, says:

"I remember the sale of the estate of North Federal Court, in February, 1831. I know mother felt very badly about her dower being sold. And Daniel told mother before me it could n't be helped, father's debts must be paid. Mother supposed it was all right, and that Daniel had power to sell it, and she made up her mind to buy it in. She employed Adin Hall, a broker in Boston, to buy it in. He did buy it in for $400.

That was not enough to pay the debts, and one-fifteenth of estate in Broad Street was sold to defray the debt, the whole debt being about $750. Daniel came in often to see if mother had raised the money. He said the creditors wanted it, and she must get it. She said to Daniel, "why can't you raise the money?" and Daniel answered, "there is no use of your trying to raise the money for it; you never can pay for it"—or words to that effect. She sent me to the store shortly afterwards to see if he had tried to get any one to take the mortgage. He told me it was no use for mother to try to hold it, she never could get the money. In a few days after this, we heard through Mrs. Johnson, my aunt, that three men came down to the North Federal Court, and got into the window of mother's house, put out a flag, and after a short time took it in again and went away. Mother said, "is it possible that Daniel has sold that house again, and not let me know about it." Mrs. Johnson said that Daniel Badger was one of the three men. I know Daniel came to the house shortly afterwards. I think mother sent for him, and she said to him, before me, "Daniel, have you been selling that North Federal Court House, over again? She told him what Mrs. Johnson had said, that three men got into the window, put out a flag, and that he was one of the three men. The house was unoccupied at the time, and mother had the key. Daniel told her that he could n't wait for the money any longer, that there was no use in trying to raise it, or in other words to that effect."

E. M. Smith, in answer to the 14th interrogatory, pp. 140–141, says:

"I knew that the house in North Federal Court was to be sold, and that my mother employed Adin Hall to buy it for her. This was done in February, 1831.

About that time or shortly afterwards, Daniel came to my mother's, and I heard her ask him to help her in raising the money to pay for it, and she told him that Adin Hall was her agent. He declined to do so.

My mother afterwards got a party who was ready to advance the money, when she heard that the house had been sold again. Daniel came to the house shortly after, and she said, "Can it be possible, Daniel, that you have sold that house over again? He replied that it was of no use waiting for her to raise the money, and he had to close up the estate."

And Almira A. Badger, in answer to the 16th interrogatory, page 88, says substantially to the same effect.

And these witnesses are corroborated by the testimony of other witnesses, as the Record will show.

Each one of his acts contributed directly in his plan of operations towards securing for himself control over these estates.

And each was essential to success in accomplishing his object.

The balance of the account, stated in September, 1827, would not do it, as the proceeds of the Distil House Square estate would be ample to pay that.

A necessity must be shown for taking the whole of the real estate. And the "additional list of debts" is accordingly filed.

The North Federal Court and Broad Street estates are set off to the widow for her dower, and are thus brought within his means.

Having thus, as he supposes, created a necessity for selling the real estates, he petitioned the Supreme Judicial Court at the March term, 1830, for license to do so.

And here we find fraud and misrepresentation in every step.

Richardson and Jacob Badger appeared in court by counsel and opposed the petition.

He bought their interest in these estates, took a conveyance to himself and thus silenced their opposition.

Thomas Richardson, in answer to the 3d interrogatory, page 59, says:—

"This happened a long time ago, some thirty years ago. I gave my consent, in writing, to the sale, by the administrators of the real estate belonging to the estate of Daniel Badger. I had sued the administrators for a settlement, and after that they made a settlement with me, and under those circumstances I gave the consent. I can't tell when I gave this consent, without referring to some records. It was somewhere about 1830. It was done at the request of Daniel B. Badger. I had, at the time I gave my assent, disposed of my interest in the estate of the said Daniel, deceased, and at the time I think I gave my assent, I did so."

See Exhibit A, page 58.

" Deeds, pp. 44, 45.

Jacob Badger in answer to the 11th interrogatory, pp. 100–101, says:—

"I afterwards resisted many importunities of his to sign the petition giving him power to sell, and learning that he was going to present it to court, on a certain day, I appeared with my counsellor, Curtis, to remonstrate against the Court granting the power. He then proposed to buy my right in the North Federal Court and Broad Street property, provided I would sign, and not use my influence to prevent any others signing. My counsellor, Curtis, advised me to sell, and as I was then out of business and about leaving Boston, and wanted money to leave

with, I accepted and sold on those conditions, and signed the petition, and I did not mention to the family, as I agreed not to, my reasons for signing the petition."

See Deeds, pp. 46–47.

And he thus obtained the license so essential to his purpose, and without which he could never have indulged the hope of depriving his brothers and sisters of their inheritance.

Can there be any doubt that this was his motive? His conduct is irreconcilable with any other or honest motive.

It was not necessary to sell these estates to obtain payment for his services. His second account shows that if he had not paid one of the Amory notes, and the interest on the others, all of which were barred by the Statute of Limitations, when he paid them, there would have been a large balance in favor of the estate, after payment of the sum claimed by him for services.

See Administrators' second account, pp. 161, 2, and 3.

These facts are not only consistent with our theory, but they admit of no other truthful explanation.

Why did he purchase the shares of Mrs. Richardson and Jacob Badger in these estates, to prevent opposition to the sale?

Was it because he felt so deeply the moral obligation to pay his father's debts, that he was not only willing to contribute the two-tenths he already possessed, but was willing to buy two-tenths more for that object? Or was it because he could thus realize the hope he had long entertained, "to become ultimately the owner of those estates?"

It was not the moral obligation that influenced this act. He was incapable of it, as the evidence abundantly proves. His treatment of his mother and sisters in the trying winter of 1826-7, shows him to have been destitute not only of all sentiments of obligation to filial duty, but even of most of the common instincts of humanity.

Mrs. Sturgis in answer to the 6th interrogatory, page 107, says:

"The winter of 1826 and 1827, when we lived in Sheafe Street, was one of great suffering, with those of us at home. Mother had no boarders that winter; sister Eliza and myself were sent morning after morning to him, to see if we could get any rent for the sustenance of the day, and I never remember of his giving us more than a small piece of money, and oftener sent us away without anything. He used to speak to us as if we were beggars—very harshly, as if we were coming to him to get what was not our due. He would sometimes throw a small piece of money at us, and tell us to go away."

He borrowed $60 from his mother, soon after the death of his father, which he repeatedly refused to pay, although earnestly appealed to. When the family were suffering from destitution, and after allowing the note to be barred by the Statutes of Limitations, defied his mother to collect it, and it remains unpaid to this day, and is now on the files of this Court, in the Clerk's office.

Almira A. Badger, in answer to the 7th interrogatory, on page 87, says: "He never rendered her any assistance, on the contrary, he never paid my mother what was due her. In about a year after my father's death, my brother Daniel borrowed from my mother $60, and gave his note, and never paid anything on it, and when it was outlawed defied her to get it."

Alfred C. Badger, in answer to the 7th interrogatory, page 97, says, —"I have asked him several times when I went to his store, whether he could not let me have some money due mother on a note she had of his, but he never paid me a cent, or any other person to my knowledge."

Mrs. Sturgis, in answer to the 7th interrogatory, page 107, says,— "My mother loaned him $60 in 1820, for which he gave his note. I have asked him repeatedly to pay the interest on it, if he would not the principal, and he always refused, and never paid either principal or interest, and the last time I asked him, he laughed at me, and said that was outlawed long ago, and mother had better burn it up."

Mrs. E. M. Smith, in answer to the 7th interrogatory, page 139, says, "At my mother's death he owed her about eighty dollars which he refused to pay her, even on her dying bed. He never did pay it. We asked him to pay it in order to assist in the funeral expenses, but he declined."

His conduct as set forth in the answer of Mrs. Sturgis to the 9th interrogatory, page 108, further illustrates his character in this regard. She says: —

"In 1828, I think, my brother David J. gave to mother notes of her brother William Jones. He said to mother, I give you these notes to make me comfortable. (My brother David was subject to fits of insanity at that time, and he feared he would be troublesome to mother, and he wished to compensate her.) The family took up goods on these notes, from William Jones, amounting to $200, (who kept a dry goods store) which amount was not endorsed on the notes. The notes being nearly outlawed, Daniel came to mother one morning and asked her to let him have them, so that he might get them renewed for her. Mother was in distressed circumstances at that time, receiving very little rent, and she gave him two of the notes, after his teasing her a great deal, and she reserved one, but she did not give those two until he brought

Uncle Joseph Badger, who, together with himself signed a paper that the notes should be returned after being renewed, without injury to William Jones. The next morning Daniel came to mother and said he could do nothing without the other note, and she gave it to him after considerable talk, and with great reluctance, and enjoined upon him again not to hurt William. He caused Uncle William Jones's failure, and sold his property, and reserved the amount of the notes with interest, which was over $2,000. This money he never accounted to mother for, in any way, or gave her any of it, and said he should keep it; and mother talked to him a great deal, and said, 'Daniel, I hope you will pay Uncle William at least the $200 which is due on the notes; and he said he would see to it, or something like that, and shortly after that mother sent me to his store to see if he would let me have the $200 to pay to Uncle William Jones. He told me that if mother would sign a paper certifying that he had honorably discharged every duty as Administrator in settling the estate, and freeing him from all charges which might hereafter be brought up against him, he would give her the $200. I told him that mother knew too much of him to sign such a paper, and she never would do it, and that if he had n't a clearance now he never would have. Mother was with me at his store a short time afterwards, and he proposed to her the same thing, to sign the paper. She told him she never would sign such a paper for him. She said, 'Daniel, you know that you have wronged both me and the children.' He afterwards wrote a paper to the same effect, and sent it up on Sunday noon, by his son Erastus, for mother to sign; and mother kept the paper and sent back word by Erastus that he need not send her any more papers to sign."

Can it be believed that a man who could thus treat a *living* mother would from moral principle alone, surrender his inheritance to save the *honor* of a *deceased* father?

But there was no moral obligation resting upon the conscience of any one in the matter.

The only debt remaining unpaid when these estates were sold, was the debt of $2000 and the $120 interest, due to Amory. This debt was amply secured by mortgage on the real estate in Broad street. It was appraised at $4000, subject to the mortgage, and was so assigned or set off to the widow. The appraisal shows it.

Daniel Badger, the deceased, paid in 1815, $6300 for it (see deed, page 42); $5500 of the consideration was secured by mortgage, upon which all but $3000 had been paid at the time of his death (see "list of debts," page 32).

This property consisted of a brick building and a lot of land situated

on one of the principal business streets in the city of Boston, opposite the head, and within a few hundred feet of India wharf. If in 1815 it cost $6300, it may fairly be presumed to have been worth $7000 in 1820, five years afterwards. The mortgage on it at that time, being $3000, the equity on the estate subject to the mortgage, would be $4000, which was undoubtedly a fair valuation.

Now on the 1st of March, 1830, and just before these two estates were sold, the Administrators had in their hands, as shown by their second account, pp. 161, 2, and 3, after paying the balance alleged to be due them, and other small demands, which were all the claims pretended to exist against the deceased or his estate, except the notes of $2000, secured by the mortgage, the sum of $1379.

The holder of these notes, barred as they were by the Statutes of Limitations, had no claim against the Administrators on any ground whatsoever. His remedy was against the land which was ample to pay it, and still leave the widow more than was set off for her, because when it was appraised, the mortgage was $3000, now it was only $2000, $1000 having been paid by the estate. If the Administrators had left the mortgagee to his remedy, under the mortgage, and settled their account then, there would have been left for the heirs, the estate in North Federal Court, and the sum of $1379, for distribution. If they had acted honestly, and solely in the discharge of their duty to the heirs, whose trustees they were, they would have taken this course. But Daniel B. Badger, by the acts complained of, deprived them of the North Federal Court estate, and of this balance, both of which we trace into his possession.

We think we have thus shown, that his real motive in applying for, and procuring the order or license to sell, was to possess himself of these estates, and no other.

A review, however, of his acts, subsequent to the license and up to the time of the purchase by himself, will disclose further, and we submit conclusive proof of this fact.

The circumstances attending the sale of the Distil House Square estate, admit of no explanation, consistent with good faith on the part of Daniel B. Badger.

The delay in offering the property for sale, the remarks of the persons present, the conversation between Jacob Badger and the auctioneer, the conduct of the crier, all show an intention on his part to secure it for himself.

Jacob Badger, in answer to the 14th interrogatory, pp. 101–102, says:

"I know about the sale of the Distil House Square Estate, in the year 1830. On the day of the sale, 20th July, I was passing around the corner of Exchange and State Streets, I heard Wilson, the Town Crier, crying the sale. Among his descriptions of the property, he described it as being thirty minutes walk from State Street. I told him that was a much greater distance than it really was. He told me Daniel B. Badger had given him that description, and he had to go by what he represented, and he continued crying the same as before. Property at that time, in Boston, was desirable and valuable, very much according to its nearness to State Street. This property is six or seven minutes ordinary walk from State Street. I was near the property at the time it was published to be sold — at 11 A. M. There was a company of about ten or eleven present in the street, in front of the property. The auctioneer, Hersey, did not put the property up when the time arrived for the sale, 11 o'clock, and as the day was rainy, cold, and disagreeable, the company were restless, and kept calling on him to proceed with the sale. He said he was governed by the directions of Daniel B. Badger, who was present, and should sell when he told him to. I protested, as one of the heirs, and called upon him to go on with the sale. He answered that he did not know me in the matter, and should be governed by Daniel B. Half an hour having expired, people began to demand if there was going to be any sale made. The auctioneer said he could not say, it would depend upon how the Administrator, Daniel B. Badger, should determine. The company then began to leave. I spoke to several who were leaving, and entreated them to stop until the property was sold. They replied they could not stay in the rain on an uncertainty; besides it is said it is told among the company that the property will be bought in for the heirs, and they are requested not to bid, and they then left, after stating this to me. After about an hour's delay, and when the company was reduced to five or six, the property was put up and sold, and bid in by ——— Hart. D. B. Badger had given indications that he intended to buy the property, and my mother and the heirs suggested that I should see how the sale was managed. It was sold far below its real value."

So with regard to the sale of the North Federal Court and Broad Street Estates.

These Estates were advertised to be sold on the 5th of February, 1831.

Only one was put up for sale, as the Administrators say. Why was not the Broad Street Estate sold according to notice?

The answer is obvious: it was because Daniel B. Badger found that

his purpose to become the owner of these estates was in danger of being defeated.

His mother's agent had bid off the one, and he had reason to suppose that he would bid off the other also.

What was to be done? Why! — abandon the attempt to sell, and try again on another day. In the meantime, he could prevent his mother from completing the purchase of the North Federal Court Estate, and put them both up again and sell them without her knowledge.

This is just what he did, as the evidence will show, for within about a fortnight afterwards they were both sold to his own agents, without any notice to the family, or knowledge by them, of his intention to offer them for sale.

Almira A. Badger in answer to the 16th interrogatory, page 88, says:

"Daniel said to my mother in my presence that the estate in North Federal Court was to be sold. Mother was advised to buy it in, that she might have the entire control of that house. She employed Adin Hall as her agent, and he bid it in for $400. On the same day, one-fifteenth of the house belonging to the estate in Broad Street was sold. While mother was endeavoring to raise the $400, Daniel was constantly annoying her; he said the creditors were anxious to receive their pay, and he did not know what injury they might do to him. In less than a month from the sale of this estate, one of the residents of Federal Court came and told mother that three men came down in the Court, Daniel Badger was one of them, and got in the window of the house, and put out an auctioneer's flag, remained there about ten minutes, took down the flag and went away. The house was not occupied at that time, and mother had the key. Mother sent immediately for my brother, Daniel, upon hearing that he had put out a flag again, and said, 'Is it possible, Daniel, that you have sold the estate in Federal Court again.' He answered that he had, and there was no use in waiting for her, she never would raise the money, and he wanted it."

Mrs. Sturgis, in answer to the 14th interrogatory, on page 109–10, testifies to the same purport.

Mrs. E. M. Smith, in answer to the 14th interrogatory, pages 140–1, testifies substantially as above, and in answer to the 15th, page 141, says: —

"She told him that she had been told by her sister, who lived opposite the North Federal Court House, that she saw three men (in March, 1831,) get into the window—that one of them had an auctioneer's flag, which he stuck out, and one was Daniel Badger. He replied that he did re-sell it, that he wanted to close the estate, and couldn't wait for

her, and that it was no use for her trying to get the money to pay for it."

The conversations between Daniel B. and his mother, in the presence of these witnesses, prove this.

Further evidence of intentional concealment of the second sale is to be found in the fact that the notice or advertisement of sale was not signed by the administrators, or by any person on their behalf. The names do not appear in it, — a marked difference in this respect from all previous advertisements of sales by them. And in the further fact that instead of employing the auctioneer who had acted for the administrators in all the sales previously made by them, and who was acquainted with the family, they were sold by a stranger, not a licensed auctioneer.

Why was not the Broad Street estate sold on the 5th February?

And why did he sell both estates afterwards without notice to his mother? The only reason is, he intended to buy them himself.

Can any other reason be given for not selling the Broad Street estate on the day first advertised? The administrators ought to be able to give the reason, but they don't do it; they simply say, that "for reasons which at this distance of time it is impossible to state, it was deemed inexpedient to expose said Broad Street estate for sale on said 5th day of February."

But surely, no lapse of time ought to excuse administrators from giving *some* reason for unlawfully abandoning a sale, instead of adjourning it, as the law required.

Again, the North Federal Court estate is sold one week for $400 to a responsible person, whom he could compel to take it. The next week he sells it to a man from whom he purchases it himself, for $150.

These estates are bid off by persons who attended the sales to purchase the property at his request. They were his intimate friends, and inmates of his family.

They convey them back to him contemporaneously with the delivery of deeds to them — without paying or receiving any money.

The last estate is sold for the precise sum to be raised.

Why was no money paid? not for the reason defendant states, for the Distil House Square estate was sold in July, and not re-conveyed until March.

Why was the Broad Street estate sold for the precise sum to be raised? — because, if it had brought more the sales would have been void. Litchfield *vs.* Cudworth, 15 Pick. 23.

He often declared that as the oldest son, he was entitled to his father's estate, and meant to have it.

Jacob Badger in answer to the 12th interrogatory, page 101, says:—

"I have frequently heard him say, that as the eldest son, he had a right to all my father's estate, and he meant to have it. On various occasions I have heard him say so, particularly when we attempted to thwart him in any measure in relation to the estate."

Mrs. Sturgis, in answer to the 12th interrogatory, page 109, says,—

"I have heard him say many times that he meant to have the whole of father's estate, that he was the eldest son, and it belonged to him."

Mrs. Smith, in answer to the 12th interrogatory on page 140, says,—

"I have heard him; once in particular in the house in Myrtle Street. He was talking with Almira. Always after she objected to having that paper signed, he was very venomous towards her. He said to her that he was his father's oldest son, and that he had a right to have the property, and meant to have it, and that he would see Almira lying in the gutter without assisting her."

He told his brother, Augustus H., that "he should fix things in such a way that none of them would get a cent."

A. H. Badger, in answer to the 10th interrogatory, on page 93, says,

"About the time we were trying to substitute Jacob in the place of Daniel, as Administrator, Daniel told me in talking about the matter, that he would fix things in such a way that none of us would get a cent without he chose to give it to us. This was while we lived in Hanover Street, and a short time before I left Boston. I recollect very well of the family saying that he claimed the best right to the property, as he was the eldest son, and had helped to save it, as he had been clerk for my father."

He did "fix things so that they should not get a cent."

He sold the Broad Street estate to be conveyed free from encumbrance for $636, and after he bought it himself, he paid over $2000, which he charged to the estate, to remove the mortgage upon it, and thus balanced his account.

And this was the crowning act of all, and the keystone of this arch of evidence.

On the 12th of March, he offers the Broad Street estate for sale, to be free from all encumbrances except the widow's dower. Now at that time there was an encumbrance, by mortgage of $2120. He announces at the sale, that the purchaser will receive a deed of the estate free from this mortgage. He makes it incumbent upon the Administrators by the terms of the sale to pay off this mortgage. He sells the estate for $636, — $1484 less than the encumbrance they thus agreed to

remove. He buys the estate for himself from the lucky purchaser for the same sum, pays off the mortgage with the money of the heirs, and asks this Court to believe that he had no expectation of becoming the owner, when he offered the estate for sale.

Surely if *motives* can be inferred from conduct, every act of Daniel B. Badger, from the first to the last, proves conclusively an intention to become the owner of these estates.

V. It is respectfully submitted that we have established the following propositions:

First. That the Supreme Court of Massachusetts had no authority to license the sale of either of these estates, and the proceedings of the Administrators were for that reason void.

Second. That the estates in North Federal Court and Broad Street, being subject to the life estate of the widow, could only be sold upon special license, and not under a general license to sell all real estate; and that, as no such license was given, the proceedings of the Administrators as to these estates were for that reason void.

Third. That Daniel B. Badger, one of the Administrators, bid off these estates through his agents, Gilpatrick and Hart, and the sales were for that reason void.

And we are entitled to the relief prayed for, unless we have lost our rights by the lapse of time, or the Statutes of Limitations, or are otherwise estopped from asserting them.

It may be true, as defendants will insist, "that Courts of Equity consider themselves bound by the Statutes of Limitations, which govern Courts of Law in like cases, and in many other cases they act upon the analogy of the limitations at law, as where a legal title would in ejectment be barred by twenty years adverse possession, Courts of Equity will act upon the like limitations and apply it to all cases of relief sought upon equitable titles or claims touching real estates."

These as abstract propositions we do not controvert. But we do not admit that they furnish any ground for refusing the relief prayed for in this bill.

Now the defendants invoke the protection of this principle, and whether it be applied by the Court, either by analogy or in obedience to the Statute, the defendants must clearly bring themselves within it. It is

not for the plaintiff to show that he is *not* barred by the Statute, but for the defendants to show that he is; they must make it appear by a proper plea, and proof that they are entitled to the benefit of the limitation. It will be said that more than twenty years had elapsed, since the sales took place, before this suit was commenced, and that this is apparent on the Record, and therefore under the General Statute of Limitations of the Commonwealth of Massachusetts, we should be barred.

But that Statute allows, to persons under certain disabilities, further time to prosecute their claims. Among others — "Married women" have thirty years, if coverture shall exist so long. Two of these heirs, Mrs. Smith and Mrs. Sturgis, whose assignee the plaintiff is, are married women, and have been for many years, how long does not appear; but for aught that does appear, upon this Record, *their* rights are not yet barred by this Statute of Limitations. Nor does it appear that this plaintiff is within that Statute. It not only does not appear that he became of age twenty years before the commencement of the suit, but the inference is irrasistible that he did not.

Nor are we barred by any rule of limitations, peculiar to Courts of Equity, because of alleged laches. We do not admit "that Courts of Equity treat a less period than the one specified in the Statute as a bar to the claim."

Story, J., says, "In a case of trusts of lands nothing short of the statute period which would bar a legal estate or right of entry, would be permitted to operate in Equity as a bar of the equitable estate.

Baker *vs.* Whiting, 3d Sumner, 486.

Certainly no bar either legal or presumptive, will begin to run until after the cause of action or suit has arisen, and in equity in cases of fraud and mistake, it will begin to run only from the time of the discovery of such fraud or mistake, and not before.

2d Story's Eq. Jur., Sec. 1521, *a.*

The license to sell, we have shown, was procured by fraud.

If Mrs. Ann Badger, the guardian of the plaintiff and his assignors, did not consent to the sale, in writing as alleged, then Daniel B. Badger committed a fraud upon the Court.

If she did so sign, she was induced to do so by the misrepresentation of Daniel B. Badger, that it was his right as well as duty to take the estates for payment of debts, and that she could not legally prevent it. This he said repeatedly, as the testimony will show.

Daniel B. Badger sustained to her and her children, more especially the minors, a relation of peculiar trust and confidence, of both natural and legal obligation. He was not only Administrator, and thus the guardian of their interests, but he was her son and their brother. It was his most sacred duty, imperatively imposed, to deal with them frankly, truthfully, and honestly, and a Court of Equity will hold him strictly to it. He wilfully deceived them, when he told them it was his legal right and their duty to thus give up their estates, — and this was a fraud upon them.

But whether fraud or mistake, they were not in default, and they will not be barred, either by the statute or by laches, until they discovered it. When was that? Certainly not until long after these sales took place.

There can be no acquiescence without full knowledge of all the facts. He not only withheld information, but he deceived them into submission — not acquiescence. Even a written acknowledgment of acquiescence in his acts, made in ignorance of their rights, would not bind them. This was so held — in the case of Michoud, *et al. vs.* Girod, *et al.*, before cited — in the following words: — "Even acquittances given to an Executor, without full knowledge of all the circumstances, where information had been withheld by the Executor are not binding." And the Court set aside and annulled a decree in favor of one of the Executors for a large amount, although there had been a judgment in his favor by a competent Court, after a full trial before arbitrators, and an allowance of the sum so found to be due him in the Executors' account.

An important question here arises, and one that must be considered and answered, before this Court can pronounce this plaintiff, or his coheirs, in default; and that is, When did they first discover that they had been deceived and imposed upon by their brother? or, in other words, When did they first learn that their estates were not legally liable to be taken and sold for payment of debts? — for not until that time, will the limitation begin to run.

The bill alleges substantially, that this was not known to them until within five years before the commencement of the suit. The answer does not deny this. It is in these words: — "This defendant (Badger) denies that the complainant, or any of the said heirs at law of said intestate, did not have personal knowledge of all acts and doings of said Daniel B., in reference to the sale and purchase of these estates, until

within five years, &c." This is, at least, evasive. The bill does not allege that they "had no knowledge of the sale and purchase of these estates, until, &c," and the answer denies what is not alleged — leaving the allegation unanswered.

But the evidence, both of the conversations and conduct of the members of the family among themselves, and with Daniel B. Badger, shows, that up to a very late period there was no intimation by either of them of a suspicion that the Administrators did not possess the legal right to sell these estates, which Daniel B. had claimed for them; but that their whole complaint was, that he had defrauded them of their property in his mismanagement of the estate, and especially in reference to the rents — the whole of which he had received, amounting to nearly $2000 a year, for seven or eight years, and which he had never accounted for.

Sufficient, however, does not appear, to make it the duty of this Court to shield the defendant from accountability for his fraudulent acts, on the ground that the plaintiff has grossly neglected to enforce his rights in the premises.

But in cases of actual fraud, Courts of Equity do not adopt or follow the Statutes of Limitations, — they will grant relief within the lifetime of the party who committed it, or within thirty years after it has been discovered, or become known to the party whose rights are affected by it.

Michoud, *et al. vs.* Girod, *et al.*; 4th Howard, 503.

The rule as stated by the Court, in that case, is universally recognized and applied by Courts of Equity. It has been affirmed by this Court in subsequent cases, and we do not think it will be controverted.

It was held in that case, that "A purchase, *per interpositam personam*, by a trustee or agent of the particular property of which he has the sale, or in which he represents another, whether he has an interest in it or not, carries fraud upon the face of it;" and that "this rule applies to a purchase by Executors, though they were empowered by the will to sell the estate;" and "that a purchase so made by Executors will be set aside."

The sales in the case at bar, took place in 1830 and 1831; the first suit was commenced in May, 1857 — the present suit, in September, 1858, and in the lifetime of the person upon whom the fraud is proved, and within thirty years after it had been discovered.

Another defence is set up founded upon a statute of Massachusetts passed in the year 1817, chap. 190, sect. 12, and is stated in the opinion of the Court below, in these words:—

"Actions for lands sold by Executors, Administrators, or Guardians, cannot be maintained in this State by any heir or other person claiming under the deceased testator or intestate, unless the same be commenced within five years next after the sale. Revised Stat., Mass., chap. 71, sec. 37, p. 458; chap. 72, sec. 9, p. 461."

But in that statement, a material provision of the statute is omitted, to wit: "Excepting that persons out of the State, and minors and others, under any legal disability to sue, at the time when the right of action shall first accrue, may commence such action at any time within five years after the removal of the disability, or after their return to the State."

This statute was neither pleaded nor set up in the answer. Some of these parties whose interests in the estates were conveyed to the plaintiff, are within this exception, as shown by the evidence in the case.

Alfred C. Badger moved to New York in 1831, before he was twenty-one years of age, and has resided there ever since. Jacob Badger moved to New York in 1830, before the sales of the Broad Street and North Federal Court estates were made.

Augustus H. Badger moved to New York in 1830, before he was twenty-one years of age — before the sale of the last-mentioned estates took place. It does not appear that they or either of them have ever been in the State of Massachusetts since.

At what time the plaintiff left the State of Massachusetts, or whether he has ever been there since does not appear.

If an issue had been raised by plea or answer, we could have shown that the plaintiff was not within the prohibition of the statute. We do not admit, because it has been said by a learned jurist "that Courts of Equity act upon the analogy of the law as to the Statutes of Limitations, and will not entertain a suit for relief, if it would be barred at law. If the objection does not appear on the face of the bill, it may be taken by way of plea or way of answer;" that the clear inference is that the learned authority did not regard the plea or answer as necessary, certainly not as to a statute which the defendant may waive or not as he pleases. He did set up the General Statute of Limitations in his answer, and by a familiar maxim in the law he must be taken to have waived all others—"*Expressio unius est exclusio alterius.*" The present

is a case clearly showing the necessity of such a plea or answer to prevent injustice.

It was by accident that Alfred C. Badger, Jacob Badger, and Augustus H. Badger stated the facts in their depositions, which except them and their shares from the operation of the statute.

But the statute is not intended to apply to the case of a sale by an administrator, which was absolutely void; for by its terms it is confined to cases of sales made "under the provisions of that chapter," that is, where sales are made under competent authority, but are liable to be avoided on account of some irregularity in the proceedings; because in the very next section it provides that in such actions it shall not be avoided on account of any "irregularity," provided, "First, that the executor or administrator was licensed to make the sale by a Court of competent jurisdiction.

"Secondly, That he gave bond, &c.

"Thirdly, That he took the oath, &c.

"Fourthly, That he gave notice of the time and place of the sale.

"Fifthly, That the premises were sold accordingly by public auction, and are held by one who purchased them, in good faith."

Surely that statute cannot be held to apply to this case.

Nor is it intended to apply to the case of a sale made by an administrator to himself, and this is shown by the general tenor of the other provisions in the statute.

But the plaintiff and his assignors were all under legal disability to sue so far as the sale of the remainder in the estates subject to dower is concerned, until the death of the widow in 1856, and this was held by the Supreme Court of Massachusetts in a case which arose under this very statute.

Those estates were subject to the life estate of the widow, and until that was determined the heirs had no right to make the entry provided by that statute, for the purpose of avoiding the sales.

In *Jewett* vs. *Jewett*, 10th Gray, p. 31, decided in 1857. It was held, that, "A remainder-man during the continuance of the life estate, *is* under legal disability within the meaning of the statute of 1817, chap. 190, sec. 12 (now Rev. Sts., chap. 71, sec. 37, p. 458), so that he may bring an action within five years after the termination of the life estate, to recover lands sold and conveyed by an executor under a license, more than five years before the commencement of the action."

And on page 34, the Court says: —

"The demandant had no seizin of these premises, nor any right of entry, which would have enabled him to maintain this action until after the death of the tenant for life. He was therefore under a legal disability, within the spirit and legal meaning, if not within the strict letter of the statute, and is not barred by the lapse of more than five years from the execution and delivery of the deed to the tenant's grantor."

The license to sell, in the above case, was duly granted by a court of competent jurisdiction.

It has been said on behalf of the defendants, and may be insisted upon here, "that inasmuch as the case made in the bill of complaint, is one of actual positive fraud, that the complainant is not entitled to the relief, unless he proves these allegations; that having charged actual fraud, he cannot now stand on that ground and show himself entitled to relief, by proving a constructive fraud, arising out of all the peculiar relations between himself and the first-named respondent."

Whether this would be regarded as law in a court of equity, or not, we do not mean to discuss; but, however that may be, we submit that it affords no defence to the present case.

The bill sets forth the facts and circumstances, showing the application for license to sell the estates, the offering of them for sale, the bidding of them off by Hart and Gilpatrick, the agents of the administrator, defendant, the conveyance by the administrators to those persons, without any thing being paid, and the reconveyance by them to Daniel B. Badger, and we ask relief against *these acts*. 'Tis true we do not say they constituted "a constructive fraud," but we do call them fraudulent, and for that we have the highest authority in this country. Mr. Justice Wayne, in this court, in delivering the opinion of the Court, 4th Howard, on page 553, says: "But the morality and policy of the law, as it is administered in courts of equity, induce us to add, that those purchases were fraudulent and void, and may be declared to be so, without any further inquiry, upon the ground that they were made by the intervention of persons who were nominal buyers of the property for the purpose of conveying it to the executors. Such a transaction carries fraud upon the face of it." "It matters not, in such a case, whether the sales are made with or without the sanction of judicial authority, or with ministerial exactness. The rule of equity in every code of jurisprudence with which we are acquainted, that a purchase by a trustee or agent of the particular property, of which he has the sale, or in which he represents another, whether he has an interest in it or

not, *per interpositam personam*, carries fraud upon the face of it. In this instance, Laignel and St. Felix were the instruments of the executors. They bid off the property, paid nothing, received titles, and conveyed what they nominally bought to the executors."

And this the Court pronounced *fraudulent*, as against morality as well as policy.

'Tis true that we have alleged, and we submit, that we have proved, that the defendant's testator, did obtain the sanction of "judicial authority" by acts which we, in the bill, call fraudulent, and we submit, that by every code of morality and integrity, as well as by every code of jurisprudence, they would be denounced as such.

The defendant further insists that, as these sales were judicially ordered and conducted, and as the purchases were made for a fair price at public auction, the plaintiff has no standing in a court of equity.

But this court held, in the case just referred to, that these facts would not avail as a defence, and say, "The general rule stands upon our great moral obligation to refrain from placing ourselves in relations which ordinarily excite a conflict between self-interest and integrity." "It restrains all agents, public and private; in this conflict the law wisely interposes. It acts not on the possibility, that in some cases, the sense of that duty may prevail over the motives of self-interest, but it provides against the probability in many cases, and the danger in all cases, that the dictates of self-interest will exercise a predominate influence and supersede that of duty."

And the wisdom of the law is forcibly illustrated in the present case.

VI. If these sales are void, the heirs would have a right to the relief prayed for in the Bill, and Daniel B. Badger would hold the estate if living, as tenant in common with his co-heirs, or as trustee for them.

If the sales of the Administrators were absolutely void, Daniel B. Badger's possession would be the possession of his co-tenants in law.

If Defendant claims that the possession was adverse, it nowhere appears in this case by the evidence that such perverse possession existed twenty years prior to the filing of the Bill.

Vague rumors and mere suspicion are not sufficient to constitute notice of such adverse holding.

If the sales were voidable merely, then Badger is answerable in this suit, as trustee.

"In equity length of time is no bar to a trust clearly established, and in cases where fraud is imputed and proved, length of time ought

not, upon principles of eternal justice, to be admitted to repel relief." *Baker et ux.* vs. *Whitney et al.*, 3d Sumner, 486.

In either event it may be maintained by the present Plaintiff as Assignee of his co-heirs. *Baker and wife* vs. *Whitney, et al.*, 3d Sumner, 475.

The conveyances of the estates to Samuel D. Parker in mortgage were void as against Plaintiff.

1st. Because he had personal knowledge of the acts and doings of Daniel B. Badger in relation to these estates.

Depositions of Almira A. Badger, p. 89. Ans. to 19th int.
Mrs. Sturgis, p. 110. Ans. to 17th int.

2d. Because the records of these conveyances were sufficient notice to Parker and all other persons of the unlawful acts of the said Badger, or were sufficient to put him upon such inquiry as would lead to a knowledge of the defect in Badger's title.

But the Court will at least marshal these estates so that the Defendant Parker may be limited to the interest which Daniel B. Badger had in his own right, and by purchase of three-tenths from his co-heirs.

The conveyance to the City of Boston of the North Federal Court estate, is void on both of the above mentioned grounds.

It is alleged in the bill, and not denied in the answer of the said City, that before payment was made to the said Daniel B., and before the delivery of the deed of said premises, the said city was duly notified of the acts and doings of the said Daniel B., set forth in the bill, and that the plaintiff and his co-heirs, claimed to be the lawful owners of said land and premises in common with the said Daniel B., and that the plaintiff requested the Agents and Attornies of said City, to pay to him and his co-heirs, the proportion of the said sum of $2500 to which they were as such entitled, but the said city wholly refused to pay them their portions or any part thereof.

This is not only not denied, and therefore admitted to be true, but it would have fully appeared, if the said City had filed the copy of the proceedings, as stated in the answer.

And we respectfully ask that the decree of the Circuit Court be set aside, and the case remanded for such further proceedings as this Court may order.

JAMES B. ROBB,
Counsel for Plaintiff.

1003

Supreme Court, United States.

No. 111.

JAMES W. BADGER, Complainant and Appellant,

vs.

ERASTUS B. BADGER et al.

BRIEF OF RESPONDENTS.

This bill was originally brought in the United States Circuit Court for the District of Massachusetts by James W. Badger, with whom was joined David J. Badger as co-complainant, against *Daniel B. Badger* & al. The bill was dismissed as to David J. Badger, on Defendant's motion, for the reason that David J. Badger was joined as Complainant without his authority or consent.

Daniel B. Badger filed a plea in bar that this Complainant, James W. Badger, with others, had brought a bill in this Court against him for the same matters set forth in this bill, which bill, after testimony was taken and other proceedings had, was dismissed with costs for the Defendant. The Court decided, on argument, that said decree was not a bar to the present suit.

During pendency of said plea, Daniel B. deceased, leaving a son and sole devisee, Erastus B. Badger, the present Defendant, who has come in and made answer to a Bill of Revivor and Supplement.

Joseph Badger, who was joined as Defendant in the present bill, after filing an answer, also deceased. The bill as against Joseph Badger has not been revived.

The bill sets forth that the Complainant, and the Respondent, Daniel B. Badger, together with other brothers and sisters named, are the children and heirs at law of Daniel Badger, who died intestate in 1819, leaving a widow, Ann Badger; that said intestate left certain real estate described, — that said Daniel B. and one Joseph Badger, the brother of said intestate and uncle of these parties, were appointed administrators, — that after other proceedings of administration, the said administrators presented, in 1827, to the Probate Court at Boston, their second account, in which they falsely claimed a balance of about $2,456.33, — that they also filed a false list of debts as then due from said estate, amounting to $2,200, with the intent to enable the said Daniel B. to obtain possession to his own use, and to the wrong and injury of his co-heirs, of the remaining estate of said intestate, — that with this intent said administrators petitioned the Supreme Court, in 1830, for leave to sell so much of said real estate as would be sufficient to pay the sum of $4,676.33, which they falsely alleged was then due from said estate, and obtained an order therefor, — that the said Daniel B. obtained said order fraudulently, and procured the assent of said widow and some of the heirs to said petition, by means of "falsehood and deception," — that subsequently, to wit, on July 20, 1830, a portion of said estate known as Distil House Square was sold at public auction, to one W. P. Hart, for $2,820, — and that on the 12th March, 1831, the estate known as the Broad Street Estate was sold to said Hart, subject to the incumbrances thereon, for $636 — and an estate in North Federal Court to one Daniel Gilpatrick, for $150, subject to the incumbrances thereon — and that conveyances were made by the administrators to these purchasers respectively. That said Daniel B. procured said Hart and Gilpatrick to attend these sales and to bid off these estates for him, and that they each subsequently, in 1831, conveyed said estates to said Daniel B.; and that by reason of the premises the said Daniel B. entered upon and became possessed of said estates as trustee

for the said heirs, each 1-10, and is bound to re-convey to them and to account for the rents and profits. That the alleged fraudulent acts and doings were unknown to them until within five years last past. That on June 11th, 1858, Aug. H. and the other co-heirs named assigned and conveyed all their interest in law and equity to said estates, and to the rents and profits thereof, to the Complainant, James W.

It is also set forth that in 1854 and 1855, the said Daniel B. made certain mortgage deeds of these estates to Samuel D. Parker, Esq., who it is alleged had notice of the Complainant's claims thereto.

To this bill the said Joseph Badger made answer, in his lifetime, admitting that jointly with said Daniel B., and at the request of the widow and heirs-at-law, he acted as administrator, but denying each and every allegation of fraud or misconduct; setting forth that the second account and list of debts filed in 1827, was just and true, and had the assent of the widow and heirs-at-law; that the sales of real estate, in 1830 and 1831, were necessary for the payment of said debts; that the sale had been delayed, at the request of the heirs, in the hope that real estate would advance in price; that the order therefor was obtained in good faith and with the consent of the widow and heirs-at-law; that the auction sales were conducted in perfect good faith; that the administrators took extraordinary pains to give notice of said sales and obtain the attendance of bidders; that they were sold, in fact, for good prices; that said Hart and Gilpatrick did not attend or purchase, under any fraudulent or improper understanding with said Daniel B. or said Joseph; and that in all respects, the doings of said administrators were conducted in good faith, and with earnest desire to best serve the interests of said widow and heirs-at-law.

The answer of said Erastus B. Badger, in addition to the matters set forth in the answer of Joseph Badger, denies the

fact of any assignment by the co-heirs to the Complainant, James W., and avers that such pretended assignment was fraudulent and void, and conferred no rights in equity on the said James W. It sets forth the decrees and orders of the Probate Court and Supreme Court, allowing said accounts of administration, and directing said sales of real estate, and pleads the same as final and conclusive upon the Complainant in this suit; denies that the Complainant or his grantors, the co-heirs, had no knowledge of the transactions complained of in the bill, and avers that the same were well known to, and approved of by them at the time they took place, and sets forth and pleads the lapse of time as a bar to any and all of the pretended claims of the Complainant ; and it also refers to the former suit of this Complainant and others against the said Daniel B., and to his answer thereto, and prays that said answer may be taken as a part of the present answer.

Samuel D. Parker, Esq., also filed an answer, setting forth that the mortgages from said D. B. Badger to him were made upon valuable considerations, stating the same, and denying any notice or any reason to suspect or doubt the perfect title of said Daniel B. to said estates. Answer was also filed by the city of Boston.

In the former suit against Daniel B. Badger, the complainants were this Complainant, and Aug. H. Badger, Almira A. Badger, B. P. Sturgis and Mary H. B. Sturgis, his wife, M. M. Smith and Eliza M. Smith, his wife, Alfred C. Badger and Jacob Badger.

During the pendency of that suit, to wit, on the 11th June, 1858, the pretended conveyance from all of said complainants, except James W. Badger, was made by them to him, and on the same day that their bill of complaint was dismissed on their own motion, to wit, Sept 6, 1858, the present bill was filed.

After a hearing upon the merits, this bill was dismissed with costs for the Defendants. The opinion of Mr. Justice Clifford is annexed to Respondents' brief.

FIRST.

The title which the Complainant sets up in his bill is invalid, and one that a court of equity will not recognize.

(1.) The claims of the heirs of Daniel Badger, deceased, as set forth in the bill, are not the subject of assignment, so as to furnish a title to the assignee (the Complainant) for relief in equity in his own name.

The sales of real estate by the administrators at auction, in pursuance of the order of the Supreme Court, and their deeds conveyed the legal title to the grantee, and the right of the heirs to avoid this sale is only a *right to bring a suit in equity for relief against the alleged fraud, and this right cannot be assigned.*

Harrington *vs.* Brown, 5 Pick. 519.
Prosser *vs.* Edmonds, 1 Younge & Coll. 481.

Moreover, this assignment was made *pending the suit* brought by these assignors jointly with the Complainant, for the identical matters now in suit.

A Court of Equity will not countenance an assignment made under these circumstances, and for the very purpose of enabling the parties to come in and support it as witnesses by their own testimony.

Bell *vs.* Smith, 5 B. & Cr. 188.

(2.) No actual transfer of their interest has been made by them to the Complainant, and the pretended assignment of July 11, 1858, *is colorable*, and merely for the purpose of making them witnesses in this suit.

The circumstances, already stated, under which this assignment was made, clearly indicate the secret trust and unlawful purpose of the same, and a Court of Equity will not aid in carrying them out. Neither will it give any weight to the testimony of witnesses thus made for the case.

Myre *vs.* Ludwig, 1 Penn. (Barr.) R. 47, 52.

There is no attesting witness, and no proof of the execution and delivery of the deed of assignment except from the interested witnesses themselves, which is not sufficient.

1 Penn. R. sup.
Hall *vs.* Conn. R. Steamb. Co., 13 Conn., 319.

(3.) As to the share or interest of Mrs. Mary H. B. Sturgis, the Complainant entirely fails to prove any transfer of the same.

A married woman can transfer such interest only by a deed in *which her husband joins with her*. Mrs. Sturgis was a resident of Massachusetts. Mass. Rev. St. ch. 59, sec. 2.

To establish, therefore, such a conveyance, it is as important to prove its execution by the husband as by the wife. In this case there is no such proof.

The only witness to prove the execution of this instrument is Moses M. Smith, and he is unacquainted with the signature of Mr. Sturgis, and cannot testify as to it. Smith's Dep. Ans. 10, p. 130.

SECOND.

Daniel B. Badger, the original Respondent in this suit, but now deceased, was co-administrator (with his uncle Joseph Badger), of the estate of his father Daniel Badger, who died intestate in 1819. Said administrators sold in 1830 and 1831, under a license from the Supreme Court of Massachusetts, three parcels of real estate for the payment of debts. Daniel B. Badger subsequently became the owner of said parcels by purchase from the purchasers at the auction sale made in pursuance of said license. This bill attempts to charge the Respondent Erastus B. Badger, heir and devisee of said Daniel B., as trustee of the Complainant, upon the following allegations, which comprise the substance of the bill:

First, that the charge for services in the second administra-

tion account and the second list of debts presented on the same day, viz., Sept. 17, 1827, to the Probate Court, were false and fraudulent. Secondly, that the license granted by the Supreme Judicial Court, March Term, 1830, for the sale of real estate, was fraudulently obtained. Thirdly, that the administrators intentionally neglected to give proper notice of the time and place of sale of the estates, for the fraudulent purpose of enabling the first-named Respondent to purchase the same at a price below their real value Fourthly, that he employed two persons to attend the sales, and bid off the estates, and that they accordingly attended, and bid off certain parcels of the estates for his use and benefit, and subsequently conveyed the same to their employer, without any compensation except what was paid to them for their illegal services.

In reference to the first two allegations, two preliminary but decisive objections exist.

1st, The decrees of the Probate Court of Sept. 1827, allowing the administrators' second account, and also the list of debts then due from the estate, and the decree of the Supreme Court of 1830, ordering a sale of so much of the real estate as would pay said indebtedness, under which the sales complained of took place, are conclusive upon the Complainant, and cannot be impeached or avoided by him *collaterally* in this suit.

The sales of real estate which the Complainant seeks to set aside were made under these circumstances:

In Sept. 1827, the Administrators presented their second account, wherein they claimed a balance due them of $2,456.33; they also filed a list of debts remaining due from said estate, amounting to $2,220.44; amounting in all to $4,676.33. Upon due notice the Probate Court decreed an allowance of this account. (Record, pp. 161 to 164.)

Oct. 15, 1827, license was granted the administrators, by the Probate Court, to sell so much of the remaining real estate as would produce said amount. (Ans. p. 22, and petition in Sup. J. Court, p. 145.)

The administrators did not sell in pursuance of this license, within the year, and upon their petition to the Supreme Court at March Term, 1830, and after due notice to all parties, this license was renewed by the Supreme Court (Record, pp. 166, 167); and *under this order and decree of the Supreme Court the said* sales took place.

These decrees were made by competent tribunals, having jurisdiction of the subject-matter, and are conclusive upon the Complainant, and all persons affected with notice thereof, and cannot be impeached or called in question collaterally in this suit.

Courts of Equity will not, upon the suggestion of fraud, undertake thus collaterally to revise the decree of a competent tribunal; but the party must seek his remedy directly in the forum whose decree he desires to have revised or annulled, by proper proceedings therein.

Grignon's Lessee *vs.* Astor and al., 2 How. U. S. 319.
Jennison *vs.* Hapgood, 7 Pick. 1.
Paine *vs.* Stone, 10 Pick. 75.
Vaughn and al *vs.* Northrop, 15 Peters, 1.
Laughton *vs.* Atkins, 1 Pick. 535–547.

All parties not only had notice of the proceedings in the Probate Court, but as appears by the record therein, either *directly or by their guardian, Mrs. Ann Badger, approved both of the Administrator's account and the list of debts.* (Record, pp. 162, 163.)

They also not only had notice of the proceedings in the Supreme Court, as appears by the record of said Court (Record, p. 167), but they also personally or by their guardian, assented to the prayer of the petition. (Record, p. 146.)

And they had notice of the proceedings in the Probate Court on the third and last account of administrators (April 25, 1831), wherein they accounted for the proceeds of said sales. (Record, p. 166.)

These decrees, therefore, are conclusive upon the Complainant in the present controversy, and must be taken to have been just, and well founded. 2 How. U. S. 319 (Sup.)

Secondly, But if it should be held that said decrees are not conclusive, yet this bill does not contain such allegations in reference to the particular errors or frauds in the same, as are necessary to induce a Court of Equity to reëxamine or open them.

As to the decree of the Probate Court, the naked allegation is, that no balance was due the administrators, and no debts due the estate. (Bill, p. 7.)

And as to the decree of the Supreme Court, the allegation simply is, that it was fraudulently obtained (p. 7), and that said Daniel B. obtained the signatures of Mrs. Ann Badger and of Almira Badger, "through fraud and deception." (p. 8.) These allegations are wholly insufficient.

If a decree or an account is sought to be opened on the ground of error or fraud, the particular errors must be specified, or the particular act of fraud, misrepresentation or concealment, and the bill must allege how, when, and in what manner, it was perpetrated.

Stearns, Adm. *vs.* Page, 7 How. U. S. 819.
1 Daniels' Chy. Pract. 424.

THIRD.

The Complainant has entirely failed to show in fact any error or injustice in said decrees, and has also equally failed to support any one of his allegations of fraud and misconduct.

The answers of Joseph and Erastus B. Badger, deny every material allegation in the Complainant's Bill, in this respect, and are responsive thereto.

These answers the Complainant is bound to overcome by what is equivalent to the testimony of two credible witnesses;

but this he has entirely failed to do, independently of the testimony introduced by the Respondents in their behalf.

See opinion of Clifford, J., and cases there cited, p. 8.

These allegations will be examined in their order.

I. That the second list of debts presented by the administrators on the 17th Sept. 1827, as then due from the estate, was false and fraudulent, "there being then nothing due to any persons whatever" (Bill, p. 7); and, also, that the second account of administration presented on the same day, was false and fraudulent, and especially the charge therein of $1,309 for services.

The debts due, according to said second list referred to (see Record, p. 164) were "two notes at bank, secured by mortgage, $2,000.00 — one years' interest due on same, $120.00; note due D. Pulsifer, $100.00."

Now the utter groundlessness of the charge that this list was false and fictitious, is at once exposed by referring to the first list of debts, filed by said administrators, October 1820, a copy of which is now filed by the Complainant, as a part of his testimony. (Record, p. 32.)

That list, among other items, contains the following: "three notes in bank, secured by mortgage, dated Nov. 1, 1818, $3000,00"; "one note to D. Pulsifer, $100.00."

No suggestion has ever been made by Complainant that *this* list was not accurate and true in every respect.

That the two notes of $1000 each, secured by mortgage, and the note of $100, due to D. Pulsifer, scheduled in the second list of debts of Sept. 1827, are the identical notes scheduled in the first list of October 1820, *and which is admitted to be correct*, there can be no doubt. And this inference is still further strengthened by referring to the second administration account, Sept. 10, 1827 (Record, p. 162), one item of which is "Paid J. Amory, note $1000." This was undoubtedly one of the three $1000 notes originally scheduled, thus leaving still due and

unpaid two $1000 notes as in the second list of Sept. 1827.

No testimony whatever has been introduced by Complainant, tending to show that these notes were not due.

On the other hand (1st) the decree of the Probate Court, allowing said list of debts as correct (Record, p. 164) (as well as the decree of the Sup. J. Court, hereafter referred to), is conclusive upon the Complainant, especially in the total absence of any testimony impeaching the same; and secondly, *this list received the written approval of all the adult children, and of the widow for herself and as guardian of the minor eleven children.* (Record, p. 164.)

The other branch of the charge that the second administration account was "false and fraudulent," (bill p. 7,) is equally without foundation, or any reliable testimony to support it.

The only item called in question is the allowance to D. P. Badger for his services as administrator, $1309. (Record, p. 163.)

This account was also approved by the widow and the heirs at law, (p. 163,) and *there is no suggestion in the bill or in the testimony* that *this approval was improperly or unfairly obtained.*

An attempt has been made by the Complainant to show that Danl. B. Badger agreed to serve as administrator without charge, "but, (as emphatically stated by Clifford, J., Opinion, p. 11,) after the lapse of thirty-five years the *written* assent of "the heirs to the account, certifying that they had examined "and approved the same, must be regarded as a conclusive "answer to that imputation."

There is no suggestion, still less any proof that the sum allowed was unreasonable, or disproportioned to the services rendered. They extended over a period of many years, and a Court of Equity, especially after the lapse of more than thirty years, will not go into the inquiry whether the allowance for services should have been greater or less.

But, in fact, as the testimony of Joseph Badger, the co-administrator, shows, neither administrator actually received any-

thing for his services, and that the sum thus allowed to Danl. B., ($1309,) had been advanced by him for the benefit of the family or estate. (See Joseph Badger dep. Ans. 17, 18, p. 213, and 17 Cross-Ans. p. 214.)

Most of Complainant's testimony, coming from his assignors, the brothers and sisters, relates to two points; 1st, that Daniel B., previous to 1827, did not afford any aid to the family; and, 2dly, that after 1827, when dower was set off to the widow, he was negligent in paying her rent for the premises which he occupied, as her tenant.

This testimony is irrelevant to any point, chiefly hearsay, and incompetent and incredible for other obvious reasons.

If true, it could have no legitimate bearing on any point in the case, and its only object can be to create a false prejudice against Daniel B. Whether Daniel B. paid his rent to his mother promptly or not after 1827 is no concern of the complainant: nor is it important to decide whether Daniel B. from his own resources made advances to his mother or her family previous to 1827. Admit that he did not. The Judge of Probate allowed to the administrator a sum *for his services*, and if the question were open, there *is no proof in the case that the allowance was not altogether proper.*

But this testimony is not true. These witnesses testify under the strongest bias, with an actual interest in the cause, and their testimony is in conflict with decisive facts which are either admitted or established beyond any reasonable doubt.

The imputation that said Daniel B. did not properly pay his rent to his mother or was unkind to her in any respect, is answered by the decisive fact *that she allowed him to remain her tenant from* 1827 *up to her decease in* 1854. During none of this period did she reside with Daniel B., nor was she in any way under his influence — but she was surrounded by other children, who were unfriendly to Daniel B., and after 1842, residing in New York with some of them, although she did not partake in their unfriendly feelings towards him.

Of the same unreliable character is the testimony in reference to the destitution of the family previous to 1827.

The two witnesses to this are Mrs. Smith (Ans. 8, p. 139), and Mrs. Sturgis (Ans. 6, p. 107), while the witnesses who would be best qualified from their age at the time to testify to such facts, if they were true, *are silent upon this subject*, viz. Jacob, Almira, Aug. H. and Alfred.

In contradiction of this pretence, *it is proved by the Complainant*, that during this period Jacob and David J. resided with their mother, that they were prosperous men of business, and liberal to the family.

Jacob Badger's 5th dir. Ans. p. 99.
Mrs. Sturgis's 5th dir. Ans. p. 107.
See, also, Edwin J. Jones' dep. p. 199.

The utter groundlessness of these complaints, and of any objection to the decree of the Probate Court, whether viewed as an allowance to the administrator for services, or for advances made to the family, is apparent from this consideration:

That the persons best qualified to judge in 1827 *of what services Daniel B. had rendeerd, or what advances he had made, namely, the widow herself, and the adult children, David J., Jacob, and Ann J., all approved in writing this very account, and assented to its allowance.* (See Approval, p. 163.) And there is no suggestion that this approval was improperly obtained.

So far as the testimony of Jacob Badger conflicts with this fact, it is to his injury, but not to that of Respondents.

As a mere matter of evidence, also, the decree of the Probate Court itself, reciting that the administrators had produced evidence and vouchers to prove the account, all which the Judge had examined, entirely outweighs any testimony introduced by the Complainant.

II. The next allegation is, that the decree of the Supreme

Judicial Court, March term, 1830, licensing the administrators to sell the real estate for the balance of debts remaining due and unpaid, "was procured by falsehood, deception and fraud." (Bill, p. 7.)

A copy of the order of the Supreme Judicial Court is on pp. 166, 167, Record, and of the petition and of the assent of the widow and heirs thereto, pp. 145, 146.

What was the "falsehood," "deception" or "fraud" practised by which said order was obtained, *or by whom they were practised*, the bill does not state.

It subsequently alleges (p. 8) "that the said Daniel B. procured the consent of the said Almira to the granting of the prayer of said petition by falsehood and deception, and that he, through falsehood and deception, procured the signature of said Almira Badger to various papers which he used in the Probate and Supreme Court," but what the particular falsehood or deception was is nowhere stated.

These vague charges are altogether insufficient, and a Court of Equity will not act upon them.

Stearns *vs.* Page, 7 How., 819, *supra.*
1 Daniel's Chy. Practice, 424, *supra.*

But the utter wantonness of this imputation of fraud or deception, in connection with the order of sale of the Supreme Court, is at once exposed by a reference to the indisputable documents and facts in the case.

This order of sale of the Supreme Court was for the payment of debts due from the estate, and of the balance due to the administrators, which all parties concerned had previously admitted were justly due. The specific debts then due had been returned, not only in the first account of the administrators, October, 1820, which is admitted to have been correct, but they were also returned by them in September, 1827; and the widow and all the heirs-at-law either personally, or by their guardian, approved this return, as well as the second adminis-

tration account returned at the same time, and *there is no pretence that these approvals were improperly obtained.*

Their assent, therefore, to the order of the Supreme Court was only a repetition of their previous assent, and could not have been reasonably or honestly withheld. (Assent, Record, pp. 145, 146.)

Especially as the delay in acting under the license from the Probate Court had taken place at the request or with the assent of the widow and heirs. This fact, the petition to which they assented expressly states (p. 145), and Joseph Badger, the co-administrator, testifies to the same. (Ans. 13 and 14, p. 213.)

And in addition to this is the fact, that on April 25, 1831, the administrators returned their third account, charging themselves with the proceeds of the real estate sold under said order, and crediting themselves with the payment of said debts and balances; *and no objection was made to this account, and it was allowed.* (Record, pp. 165, 166.)

The proceedings, thus originally assented to by all parties concerned, they acquiesced in for a period of nearly thirty years, and Mrs. Badger, the widow, *never* expressed any objection to them.

A very brief examination only, will therefore be necessary, of the charges that the signatures of said widow and of Almira to the petition were improperly obtained.

(1.) In reference to Mrs. Badger's signature, the Complainant's case presents this singular contradiction. The *bill* alleges that her signature was *improperly "obtained"* (Bill, p. 8), but the purpose of much of his testimony is to show that her assent was not obtained at all, and that the *signature of her name to the petition was a forgery.*

As to the charge *made in the bill,*—

If the Complainant's testimony is to be credited, it proves abundantly that Mrs. Badger so far from being deceived or

imposed upon, understood her own rights and Daniel B. fully; that she understood all the facts; that when solicited to sign by Daniel B., she was surrounded by her elder sons and daughters, who were distrustful of Daniel B., and that her assent, when given, was after delay and consideration.

And a further complete answer to this suggestion is found in the fact that this petition was but for a renewal of the license granted in 1827, *which then had her intelligent approval; and which approval, it is conceded, was not improperly obtained.*

To the suggestion that the signature to the petition is not genuine, is to be replied, first, that there is *no allegation of this kind in the bill*, the Respondents are not called upon to meet such an issue, and the Court will not listen to it.

On the contrary, the bill assumes and alleges that Mrs. Badger *did sign* (p. 8), but that the signature was improperly obtained.

But the testimony taken upon this point, if to be considered, is incompetent and entirely unsatisfactory.

The witnesses are:

Mrs. Smith, 18 Ans. p. 141.
Mr. Smith, 13 Ans. p. 130.
Mrs. Sturgis, 19 Ans. p. 111.

It does not appear that the witnesses are referring to the identical signature in question, as the paper in reference to which they profess to testify is not before this Court.

It should be decisive that the witnesses best qualified to judge of the genuineness of the signature, who signed the petition with her, are not examined on this point, viz., Jacob Badger and Almira A. Badger.

It is quite immaterial, however, whether it was actually written by her, for it is evident that if not, it was written *for* and adopted by her. The petition was presented to her for signature; it was afterwards filed in Court with her name upon it;

the order of sale was obtained on this petition and the sales took place. All these facts were known to her, and notorious in the family, and they are utterly inconsistent with the idea that her signature was unauthorized; especially as it is now for the first time suggested.

All of Complainant's testimony, so far as it concerns Daniel B.'s dealings and relations with Mrs. Badger and the settlement of the estate finds a complete answer in these facts, viz., Mrs. Badger herself, as is proved by a disinterested witness (Jones), did not concur in the censures upon Daniel B., but emphatically approved of his conduct. And again, *these parties did not avail themselves of Mrs. Badger's testimony*, but waited until after her death, when Respondent could not avail himself of it, to institute these charges. She is the person, who as they pretend, was imposed upon, whose signature was fraudulently procured or forged; and yet they carefully wait until her death, before they make their accusations.

See Edwin J. Jones, ans. 4, p. 200.

The attempt to contradict him by Smith (see Smith's 9 ans. p. 130) the Court will appreciate; and see explanation by Jones, Cross-Ans. 3, 4, 8, 9, 10, 11, pp. 201, 202.

The allegation that the signature of Almira A. to the petition to the Supreme Court was obtained by fraud and deception is entirely unfounded.

The only testimony on this point is her own statement that Daniel B. "never told her that he had bought off my sister Richardson, and brother Jacob." (Ans. 13, p. 88.)

This, if true, would prove no concealment of any fact *affecting the merits* of the petition, or which he was bound to state, much less any "fraud or deception."

But from the relation of all these parties to Daniel B., it is impossible that she was uninformed of the circumstances referred to.

Nor is it true that Daniel B. had "bought off Mrs. Richardson or Jacob Badger, in any improper sense."

Mr. and Mrs. Richardson had made an unreasonable claim for a portion of the rents, which Daniel B. had paid over to the mother, and also, an insignificant claim against the mother. Daniel B. made a settlement of both, and for a sum so small that Mr. Richardson can't recollect it. — only that "*it was quite small.*"

See Richardson's dep. Cross-Ans. 3, 4, 7, 13, p. 60, 61; and Settlement Release A, p. 58.

It is suggested that the testimony of Jacob Badger (11 Ans. p. 101), tends to prove any improper conduct in reference to obtaining his signature to said petition, it is sufficient to say that the Court will not listen to a witness who testifies to a corrupt bargain, in consideration of which he faithlessly surrendered the rights of his ward; for Jacob Badger signed this petition not only for himself, *but as guardian of A. H. Badger.*

See petition, pp. 145, 146.

Mallett *vs.* Dexter, 1 Curtis R. 185.

There is no charge in the Bill that Daniel B. took the conveyances from Jacob or from Richardson for an improper purpose, or that he used them for any improper purpose, and certainly there is no evidence to that effect.

III. It was contended by Complainant, on the hearing in the Circuit Court, and may be again, that the debts for the payment of which the Supreme Court authorized real estate to be sold were barred by the Statute of Limitations, and that therefore the Supreme Court had no jurisdiction over the subject, and their order authorizing the sale was void.

In answer we say —

(1.) No such objection is taken in the Bill, and it is not now open to the Complainant.

(2.) If the sale was made without legal authority, then it was a nullity, and a writ of entry might have been brought; and therefore the Complainant is not entitled to relief in equity.

(3.) Whether there were existing debts for the payment of which the real estate ought to be sold was *a question of fact, upon which the Supreme Court had to pass before granting the license to sell, and their finding is conclusive upon the parties.*

Perkins *vs.* Fairfield, 11 Mass. 227.

2 How. U. S. 319, is decisive; also opinion of Clifford J., p. 13.

(4.) But if this Court should inquire into the question of fact, the Respondent submits that there is not a particle of testimony in the case to warrant the assumption that these claims for which real estate was sold were outlawed in 1830. As to that portion included in the balance due the administrators, we know positively that it could not have been outlawed, *for it was not allowed until September,* 1827. If any amount was due then, the Court had jurisdiction, and the license was valid, although granted for too large a sum. Heath *vs.* Wells, 5 Pick. 145 — 11 Mass. 227 sup. And as to the notes, the Complainant has not shown *when they became payable, and certainly all parties interested treated them as existing debts in* 1830. The Respondent has made no special proof on this point, because the objection was not made or foreshadowed in the Bill, and was not anticipated.

(5.) But even if it had appeared to the Supreme Court that these notes had been due and payable more than four years after the death of the intestate, Badger, and yet it decided that they were existing debts against the estate, as it must have done before granting the license, it was an error of law, if an error at all, and binding upon the parties.

2 How. U. S. 319. *Supra.*

The Court might well have considered that as these notes

were secured by mortgage, they *were a lien* upon the estate, and that therefore the estate might better be sold for the benefit of the heirs *instead of allowing it to be foreclosed by the mortgagees.*

The injustice of the Complainants' objection, as well as its invalidity, is thus apparent.

(6.) License was granted by the Probate Court in 1820, and again in 1827, for the sale of real estate to pay, among other debts, these identical notes.

(For proof see Petition to Sup. Court, p. 145.)

No objection is taken to these orders, and they were assented to by all parties. These orders fixed these balances as debts due from the estate, they became liens upon the estate, and the Statute of Limitations limiting the responsibility of administrators did not apply to them.

(7.) The Complainant and all parties concerned are estopped to deny the existence of these debts as a claim against the estate, or the validity of the order of the Supreme Court — for these reasons :

(a) They concurred with the administrators in representing to the Supreme Court (see Petition, p. 145) that these debts existed; and the subsequent action of the administrators in making sales was necessarily the result in part of that concurrence.

The widow and heirs, in thus concurring, did not act ignorantly or unadvisedly in reference to the particular debts to be paid, for they were the identical notes which in 1827 they had approved as subsisting debts, and in relation to which they must have been fully informed.

(b.) They also made no objection, and therefore assented to the third administration account, wherein the administrators charged themselves with the proceeds of the sale under the order of the Supreme Court.

(See account and order of Probate Court, pp. 165, 166.)

(c.) And they are estopped, lastly, because the delay or forbearance to sell under the license of the Probate Court of

1820, and again of 1827, whereby the license of the Supreme Court in 1830 became necessary, was at their request and for their benefit. This the Petition (p. 145) admits, and the same fact is proved by the co-administrator, Joseph Badger. (Dep. 13, ans. p. 213.)

And Respondents' answer states it also p 22.

IV. The sales at auction under the order of the Supreme Court, were properly conducted by the administrators; and they used every reasonable exertion to procure the attendance of bidders, the most advantageous prices, and the prices actually obtained were good.

The sales were properly advertised, and took place according to the notice.

Notices of sale, p. 168, 169.

Joseph Badger, Ans. 4, 5, 6, 7, 15, 19, 20, 22; pp. 212, 213.

Cross Ans. 7, p. 214.

Andrew Brown (auctioneer), Ans. 3, 4, 5, 6, 8, 9, 10, 11, 12, 13; pp. 175 to 177.

Cross Ans. 6, 7, 14, 15; pp. 178, 179.

(That said Brown was licensed, and held himself out to be. 2 and 3 Cross Ans. p. 178.)

John Quinn, Jr. Ans. 3, 4, 5, 6; pp. 192, 193.

The estates in Broad street and North Federal Court had been previously advertised and offered for sale in February, 1831; and the North Federal Court estate was bid off by one Hall, for Mrs. Badger, as was said.

But neither completed the purchase, and under the advice of counsel, the administrators sold again, as they were bound to do. See Ans. p. 27.

Joseph Badger, Cross Ans. 22; pp. 214, 215.

No sale of the Broad Street Estate, nor of any fraction thereof, was then made.

Respondents' Ans. p. 27.

Joseph Badger's Cross Ans. 23, 24, p. 215.

V. The attempt to show that the administrator, Daniel B., fraudulently employed persons to bid at the auction sales, or was improperly interested therein as a party, is wholly unsupported by the evidence. (See Opinion of Clifford, J., p. 15.)

The case charged in the bill is one of actual fraud, but the case which Complainant attempts to prove is one of *constructive* fraud, arising out of the relation existing between the administrators and the heirs-at-law.

But it is settled in this Court, that a party cannot thus change his ground, and that, having charged actual fraud, he will not be entitled to relief by showing a case of constructive fraud.

Eyre *vs.* Potter, 15 Howard, 54.

But the proof fails to show any case of actual or constructive fraud. No imputation is made against Joseph Badger, and the testimony equally fails to fix any upon Daniel B.

The answer explicitly denies the allegation, and frankly states that said Daniel B. hoped eventually to become the owner of the estates, for the reasons given, and that this desire, so far from being concealed by him, was well known to the family and participated in by them. (Answer, p. 26.)

And the answer of Daniel B. himself, in the former suit, is to the same effect.

All that is proved to have taken place is entirely consistent with the answer in this respect, and the Complainant's testimony fails to overcome the answer, or to prove any unlawful understanding or arrangement between said Daniel B. and either Hart or Gilpatrick.

1st. As to the Distil House Square and Broad Street

estates, purchased by Hart, and by him subsequently conveyed to Daniel B.

The only evidence offered is *the ex parte deposition* of said Hart. The fact that such a stale charge of fraud is sought to be proved by an *ex parte* deposition is very significant, and will not be overlooked by the Court.

But the deposition is incompetent and inadmissible for several reasons. (Dep., p. 154 to 159.)

(1.) It does not appear that the deposition "was opened in Court."

(2.) It does not appear that it was taken in *this cause*, but the contrary. (See caption, p. 154.)

(3.) The official character of the person assuming to act as commissioner is not properly shown. As the deposition was taken without notice, and not on commission, his official character should have been certified by the clerk, or some evidence that he had acted as commissioner.

Rex *vs.* Howard, 1 Moody and Rob., 187.
1 Greenleaf's Ev., secs. 88 and 92.

(4.) His certificate does not show affirmatively that the Respondent, or some attorney of his, did not *reside* within one hundred miles, but only that neither was then within one hundred miles. (See certf., p. 159.)

Notice should have been left at *residence*, unless it appears that it was not within one hundred miles.

Dick *vs.* Runnels, 5 How. U. S., 7.

(5.) Certificate does not state that commissioner was not *attorney* of Complainant, but only not "counsel."

(6.) Nor that the deposition was retained by the commissioner, and by him forwarded, under his seal, to the Court.

In all these respects it fails to comply with the St. 1789, sec. 30.

The deposition itself, if admissible, *proves* no agreement or

understanding whatever. His recollection of the transaction is evidently very indistinct and unreliable.

The Court will place no reliance on testimony taken in this manner, especially under the circumstances of this case.

All other facts in connection with said Hart, if of any weight, only show that he purchased under the expectation of selling again at a small profit, which he did.

2d. The North Federal Court Estate, purchased by *Gilpatrick*, and by him subsequently conveyed to Daniel B.

All the testimony on this point is perfectly consistent with the idea that *Gilpatrick* knew of Daniel B.'s natural desire to become the owner of the estate, and purchased it with the expectation of selling to him.

Gilpatrick, in his deposition, speaks of an "understanding," or "agreement;" but he is testifying to events, more than 25 years old, and to which, so far as appears, his attention had never been, till then, recalled; and it would be natural for him to confound a reasonable expectation, which had existed in his own mind, with an actual agreement or understanding with Daniel B.

His recollection is not so distinct as to amount to reliable proof.

And the considerations expressed in the deeds, show that he did convey to Daniel B., at a small advance, and the probability is, that he received it.

Fraud will not be presumed, but must be clearly proved; and a Court of equity will apply this just rule most rigidly in a case like the present one, where the claim is so stale, and the complainants have neglected to present it, not through any misapprehension, but for purposes of their own, *until the means of proving the truth are lost, and the parties most interested are dead.*

The widow and all the heirs (as the references *post* clearly show) were perfectly familiar at the time, with Daniel B.'s

purchase and all the circumstances attending the same, and this is most satisfactory proof of the entire good faith and honesty of his conduct therein.

FOURTH.

The alleged claims of the Complainant and his assignors, the other heirs at law, are barred by lapse of time.

I. The Rev. Statutes of Mass., chap. 71, sec. 37, p. 458 and chap. 72, sec. 19, p. 461, declare that no action for lands sold by executors, administrators, or guardians brought by any heir or other person claiming under the deceased testator or intestate shall be maintained, unless it is brought within five years next after the sale.

This constitutes an absolute bar to the present bill.

The Respondent has not pleaded or set up the statute in his answer, but this is unnecessary where the objection is apparent on the face of the bill. And it is apparent on this bill, for it sets forth that the sales took place in 1831. (Bill, pp. 8, 9.)

Maxwell *vs.* Kennedy, 8 How. 222.
Story, Eq. Plead, secs. 484–503, 760.
Angell on Lims, ch. 26, sec. 10.
Foster *vs.* Hodgson, 19 Vesey, 180.

II. Irrespective of this statute, the time which has elapsed since the perpetration of the alleged frauds — a period of more than 25 years — during which the Complainant has voluntarily slept upon his rights, is a complete answer in equity to this claim. This defence is fully set up in the answer. pp. 27, 28.

The sales took place in 1830 and 1831. This bill was filed in 1858, and the former bill in 1856.

1. No reason or excuse has been shown for this delay.

(*a*) The bill indeed alleges that "the fraudulent acts and doings of said Daniel B. were unknown to the Complainant until *within five years* last past."

But it does not set forth more particularly *when*, nor at all by *what means*, the alleged fraud was discovered; and *the bill is fatally defective in this respect.* A court of equity does not regard such general and unsubstantial allegations.

It is well settled, that if a complainant would avoid the effect of the statute limitations, or of the lapse of time, on the ground of concealed fraud, he must set forth with particularity *when*, and by what means, the fraud was discovered, and this averment must be supported by the proofs.

Stearns *vs.* Page, 7 How. U. S. 829.
Wagner *vs.* Baird, 7 How. U. S. 258.
Fisher *vs.* Boody, 1 Curtis, 218.
Carr *vs.* Hilton, 1 Curtis, 392.
Moore *vs.* Greene, 2 Curtis, 202.

(*b.*) No concealment by Daniel B., and no wish or attempt to conceal, — and no ignorance or misapprehension of the facts by the Complainants, is shown by the evidence.

On the contrary, it is obvious that they were well informed of all the facts from the beginning.

Although all have been examined as witnesses, not one has testified to any concealment or ignorance.

And Jacob Badger testifies that the family not only knew that Daniel B. had bought, but also of his previous intention to buy.

Jacob Badger's Ans. 14, 15, 17, pp. 101, 102.

For positive proof of their knowledge, see

Dep. Joseph Badger, Ans. 12, pp. 212, 213; Cross-Ans. 14, 16, p. 216.
Edward J. Jones, Ans. 9, p. 201.

Moreover, the hostility and distrust which they profess to have always entertained, preclude the idea of their having suffered from abused confidence or want of inquiry.

It must be therefore assumed that these parties were fully apprised of all the acts now complained of, at or about the time they occurred.

(2.) The St. of Limitations is a positive bar and operates in equity *ex vigore suo*, as well as at law, in all matters of concurrent jurisdiction, or of a similar nature.

2 Story's Eq. Jur. sec. 1520, and notes.
Farnum *vs.* Brooks, 9 Pick. 212, 243.
Wagner *vs.* Baird, 7 How. U. S. R. 234, 258.
Moore *vs.* Greene, 2 Curtis, 202.

(3.) And where the St. of Limitations is not directly applicable, Courts of Equity apply the bar, and will refuse their aid after a delay of twenty years, and *often within a less period.*

2 Sugden Vend. & P. (7th Amer. Ed.) 899.
Roberts *vs.* Tunstall, 4 Hare, 257, and cases reviewed.
Gregory *vs.* Gregory, Cooper, 201.
Stearns *vs.* Page, 7 How. U. S. 830.
Fisher *vs.* Boody, 1 Curtis, 218, 219.
Jennison *vs.* Hapgood, 7 Pick. 1.
Jenkins *vs.* Pye, 12 Peters, 241.
McKnight *vs.* Taylor, 1 How. U. S., 168.
Bowman *vs.* Wathen, 1 How. U. S., 189.
Andrew *vs.* Wrigley, 1 Brown ch. R. 125.
Beckford *vs.* Wade, 17 Vesey pp. 94, 97, and *seq.*
Champion *vs.* Ripley, 1 Rus. and Mylne, 539.
Hovenden *vs.* L. S. Annesley, 2 Sch. & Lef. 636.
Sullivan *vs.* Sullivan, 21 Law Reporter, 531.
Opinion of Clifford J., pp. 15 to 18.

The above cited cases of

Jenkins *vs.* Pye, 12 Peters, 241,
Roberts *vs.* Tunstall, 4 How. 257,
Gregory *vs.* Gregory, Cooper, 201,
Champion *vs.* Rigby, 1 Russ & M. 539,

Are all cases where courts of equity determined that a lapse of *less than twenty years* barred the Complainants' claim; — and they were all cases brought to set aside conveyances alleged to have been obtained fraudulently or in violation of some trust.

The proof is clear that all of the heirs, except possibly the Complainant, had been of age more than twenty years when the first suit in this case was commenced. Jacob was born in 1803, and came of age in 1824. Almira A. was born in 1807, and came of age in 1828. Augustus H. was born in 1810, and came of age in 1831. Alfred C. was born in 1813, and came of age in 1834. Eliza M. was born in 1814, and came of age in 1835. Mary H. B. was born April 12, 1816, and came of age on the 12th day of April, 1837. Age of Complainant does not distinctly appear; but if he would exempt himself from the operation of the Statute of Limitations or lapse of time by non age, he *must allege it in his bill and prove the fact.*

Story's Eq. Plead., sec. 484.
Humbert *vs.* Trinity Church, 7 Paige, 193.
Foster *vs.* Hodgson, 19 Vesey, 184.

The Respondent submits that no stronger case can exist for the application of this just and salutary rule than the present.

It is apparent that the delay has not arisen from ignorance or mistake, or any good reason or motive.

These parties have lain by until the death of Mrs. Badger, the most important witness for the Respondent, and then, by the contrivance of an assignment to the Complainant, attempt by their own testimony to establish this stale and unjust claim.

See Morse *vs.* Royal, 12 Vesey, 377.
Catron, J., 12 Peters, 261.

The circumstance that during a portion of this period the life estate of the mother, Mrs. Ann Badger, intervened, is no answer. Although the particular estate had not determined, yet if the sale by the administrators was fraudulent, as alleged, the heirs

could avoid it at any time, and were bound to do so within a reasonable time.

Jenkins *vs.* Pye, 12 Peters, 241, is decisive. So, also,

Sullivan *vs.* Sullivan et al., 21 Law Rep. 531.
Beckford et al. *vs.* Ware, 17 Ves. pp. 94 and 97.
Opinion of Clifford J., p. 17, and cases cited.

All the authorities agree that a sale made by an administrator under license, at which he is directly or indirectly a purchaser, is not void, but at the most only voidable at the election of the heirs; and the election must be exercised within a reasonable time. Cases *supra*, and

Blood *vs.* Hayman, 13 Met., 231–237.
Robbins *vs.* Bates, 4 Cush. R., 104.

And in Massachusetts it has been held that even the lapse of three years, unexplained, would be an unreasonable delay.

4 Cush. R., 104, 106.

ADDITIONAL BRIEF OF RESPONDENT S. D. PARKER.

The relation of Mr. Parker to this case is that of the mortgagee of the estates in dispute.

On July 1, 1854, he took from said Daniel B. a mortgage of the Distil House Square estate to secure the payment of a note of said Daniel B. of $6,000; and on February 14, 1855, a mortgage of the Broad Street estate, to secure the payment of another note of $1,000.

The bill charges (p. 10), that these conveyances were made to said Parker without consideration; that said Parker had been counsel and attorney of said Daniel B., and "well knew "the acts and doings of the said Daniel B. as aforesaid, and "that he (said Daniel B.) was not possessed of any beneficial "interest in said estates, &c."

Mr. Parker in his answer (p. 16) meets each of these allegations with an explicit denial, sets up a mortgage to himself from said Daniel B., May 1, 1850, of the Broad Street estate, to secure payment of a note of $1,000, as well as the two mortgages mentioned in the bill, answers that the consideration of the mortgages of May 1, 1850, and February 14, 1855, was actual indebtedness of said Daniel B. to him, for money loaned, &c., and of the mortgage of July 1, 1854, was money lent to said Badger by him, as guardian of minor children; that he caused the title of said Badger to be carefully examined before taking said first mortgage, and denies explicitly having had any knowledge, suspicion or reason to believe that any person had any claim, title or interest in or to said premises, *except* said Daniel B.

The answer denies most explicitly any notice of any claim in the Complainant, and sets up a title as a *bona fide* mortgagee without notice. The Complainant must, therefore, prove that Parker took his mortgages with actual notice of Badger's fraudulent title. Blood *vs.* Hayman, 13 Met. R. 231 – 237.

Before depriving Mr. Parker of his security taken under the circumstances set forth in his answer, the Court will require the denial in his answer to be overcome and the imputation of notice to be established by full and credible proof.

(1.) It is clear, in the first place, that an examination of the record title of Daniel B. Badger did not and could not have disclosed to Parker any fraud or imperfection in said Badger's title. As distinctly stated by Clifford, J. (Opinion, p. 12.) "It is not pretended that there is any error in the form of these "proceedings, and the pretence, if set up, could not be sustained "for a moment, as it is obvious, from an inspection of the "record, from the appointment of the administrators to the final "settlement of the third administration account, that so far as "form is concerned, every step taken in the proceedings was "correct and according to law."

Dexter *vs.* Harris, 2 Mason, 531.

(2.) The only evidence, so far as this Respondent is aware, which can be claimed to have any bearing is that given by Almira A. Badger, in 19 ans. p. 89, and Mrs. Sturges, 17 ans. p. 110, and repeated in substance in their cross-ex. pp. 117 and 119.

Giving full credit to this testimony, just as it was given, it only proves, at the utmost, that in a conversation which occurred nearly *twenty years before the Defendant, Parker, took the mortgages in question*, Mrs. Badger, the widow, expressed to him some dissatisfaction with the manner in which the administrators had settled the estate, and that Parker in reply, expressed in substance, the opinion that if the estate had been prudently settled more might have been realized from it. With no fairness can it be said that such a conversation gave to or implied any knowledge in said Parker, that the titles which Danl. B. had previously taken from Hart & Gilpatrick were affected with any fraud or imperfection.

Much less can it be held that such a conversation, occurring in 1836 *or* 1837, *constituted notice to Parker in* 1855, *when he took these mortgages as security for bonâ fide loans then made*

The Court can have no doubt that Respondent, Parker, believed he was taking a perfect title. He had no interest or motive to accept imperfect or doubtful security, and every motive to accept only what he believed to be perfect and unimpeachable.

(3.) Even if the testimony showed that Parker was expressly informed in this conversation that Badger's title was fraudulent, yet the Court will not infer that he retained a recollection of that fact, when he took his mortgages nearly twenty years afterwards, — especially in view of his own denial, and of the acquiescence of all parties concerned in Badger's title during all that period.

Although a party may once have been informed, yet to charge him with notice, it must appear, by reasonable inference or

otherwise, that he has not forgotten it at the time of the transaction in dispute.

Mountford *vs.* Scott, 1 Turner & Russell, 274.
Perkins *vs.* Bradley, 1 Hare, 230–231.

Especially is this true when, as in this case, the alleged information was *casually* given, and not under circumstances which made it the duty of the Respondent to notice or remember it.

(4.) But the Court will not rely upon this testimony for any purpose.

It attempts to state a conversation which occurred, as the witnesses admit, on cross-examination, more than twenty years ago, — which was of no importance when it occurred, to which their attention had not been called *until the commencement of this suit*, — and which, in the nature of things, it is impossible for Respondent to contradict by other testimony.

Notwithstanding this lapse of time, *both witnesses undertake to give the precise language, and both swear to precisely the same language.*

Their testimony clearly shows previous concert and preparation, — and is not credible, — and even if it were credible, is utterly inadequate to prove any essential fact.

The Respondent respectfully submits that the Court will not deprive a *bonâ fide* purchaser of his title upon testimony of this description.

E. MERWIN,
Of Counsel with Respondents.

Circuit Court of the U. S. for the First Circuit.

MASSACHUSETTS DISTRICT.

JAMES W. BADGER, in Equity,

vs.

DANIEL B. BADGER et al.

CLIFFORD, J.

This is a bill in equity wherein the Complainant prays for an account of the rents and profits of certain real estate, and that certain deeds of conveyance may be declared null and void, and that the Respondent first named, or his representative, may be ordered to convey to the Complainant his interest in certain real estate, and pay over the proper proportion of whatever sums he or they may have received as rents and profits of the same. Bill of Complaint was filed on the sixth day of September, 1858. When filed, David I. Badger was also joined in the suit as co-Complainant, but on the fourth day of October following, the Bill of Complaint, as to him, was dismissed on motion of the Respondents, for the reason that he was joined in the suit without his authority or consent. Plea in bar was filed by the first-named Respondent, alleging that the Complainant, with others, had previously brought a Bill of Complaint in this Court against him, for the same matters, and that the former Bill of Complaint, after testimony was taken and other proceedings had, was dismissed with costs for the Respondents; but the Court decided that the former decree was not a bar to the present suit. Pending those proceedings, the first-named Respondent

deceased, leaving his son, Erastus B. Badger, as his sole devisee, and, the suit having been duly revived as against him, he came in and made answer to the Bill of Revivor. Joseph Badger, who was joined as a Respondent in the present Bill of Complaint after appearing and filing an answer, also deceased, but the Bill of Complaint as against him has never been revived, and the parties to the suit in all other respects remain as they are described in the original Bill of Complaint. Former suit, already alluded to, was instituted on the eighth day of May, 1857, and the same was dismissed on the day the present Bill of Complaint was filed. Complainants in that suit were James W. Badger, Augustus H. Badger, Almira A. Badger, B. P. Sturges, and Mary H. B., his wife, M. M. Smith, and Eliza M , his wife, Alfred C. Badger, and Jacob Badger. James W. Badger and the first-named Respondent in this suit were brothers, and children of Daniel Badger, late of Boston, who died in September, 1818, intestate, leaving a widow, Ann Badger, and ten children, to wit: Daniel B., James W., David I., Augustus H., Jacob, Almira A., Mary H. B., Eliza M., Ann J., Alfred C. Badger. Complainant admits that David I., on the twenty-fifth day of November, 1828, conveyed all his right, title and interest in and to the estates situated in Broad Street and North Federal Court, to the first-named Respondent, and not being a party to the suit, there is no question in respect to his share involved in this controversy. Ann J. intermarried with Thomas Richardson, and they, by deed of warranty, on the fifth day of May, 1830, conveyed all their interest in the estate of the intestate, to the first named Respondent. Administration on the estate was granted on the twenty-ninth of February, 1819, to Daniel B. Badger, and Joseph Badger, his uncle, who was the brother of the intestate. On the eighteenth day of October following, the inventory was filed in the Probate Court, by which it appears that the personal estate was appraised at one thousand seven hundred and twenty-one dollars and ten cents, and that the real estate was valued at twelve thousand four hundred and seventy dollars. Other personal estate having come to the possession or knowledge of the administrators, to the amount of seven hundred and fourteen dollars, they, on the

eighth day of May, 1820, caused the same to be appraised, and filed an additional inventory for that amount. Their first administration account was presented on the twenty-fifth day of September, 1820, and the same was allowed on the ninth day of October following. They charged themselves with six thousand seven hundred and forty-two dollars and four cents, and claimed an allowance for six thousand four hundred and seventy-five dollars and fifty-two cents, leaving a balance in their hands of two hundred and sixty-six dollars and fifty cents. Decree allowing that amount bears date on the ninth day of October, 1820, and on the same day the administrators presented a schedule of the debts due to the estate amounting to three thousand four hundred and seventy-five dollars and seventy-two cents, and also a list of the debts due and owing to the intestate, at his decease, amounting to six thousand seven hundred and seven dollars and fifty-eight cents. Both of these schedules were received, and ordered to be filed and recorded; and on the same day the administrators petitioned the Court for leave to sell so much of the real estate of the deceased as would raise the sum of six thousand four hundred and fifty-one dollars and eighty-three cents. Pursuant to that petition, the administrators, on the thirteenth day of November following, were empowered to sell so much of the real estate as would raise that sum, and incidental charges, amounting, in the whole, to the sum of six thousand five hundred and eleven dollars and thirty-seven cents. License, to that effect, was accordingly granted, and they sold, under it, as the Complainant alleges, the house and land in Lynde street, land and store on Green's Wharf, one twenty-fourth of house and land on Fleet street, and house and land in Cambridge Port, amounting, in the whole, to the sum of three thousand six hundred and thirty-five dollars. Certain payments were subsequently made by the administrators, to discharge certain mortgage debts, due from the estate; but as all such were included in the second administration account, they need not be specified. Widow petitioned, on the twelfth day of March, 1827, that her dower in the real estate of the intestate might be set off to her; and, on the sixth day of April following, the estates in Broad street and North Federal Court were duly assigned to her,

in full of her dower. None of these preliminary proccedings in the settlement of the estate are now called in question; but on the seventeenth day of September, 1827, the administrators filed their second administration account. In that account, they charged themselves with the proceeds of the sale of the real estate before mentioned, and with other sums, amounting, in the whole, to four thousand three hundred and fifty-four dollars and two cents, and claimed credit for the sum of six thousand eight hundred and ten dollars and thirty-five cents, alleged to be for money expended and advanced on account of the estate, including one thousand three hundred and nine dollars, for services alleged to have been rendered by the first-named Respondent, as administrator in settling the estate. Those allegations were false, as the Complainant avers; and he also alleges that the administrators, on the same day, filed, in the Probate Court, a further list of debts, amounting to two thousand two hundred and twenty dollars, falsely alleging that the same were due from the estate, whereas the Complainant alleges the account was false, that there was nothing due from the estate to the Administrators, or either of them, or to the holder of the notes specified in the list of debts, or to any person or persons whatever, for which the estate of the deceased was bound or in any way liable. On the contrary, the Complainant alleges that the balance of the account was claimed by the first-named Respondent, and the list of debts filed by him in violation of his trust and duty as Administrator, to enable him to obtain possession for his own use and benefit of all the remaining real estate of the intestate, situated in this city, to wit: the estate known as the house and land in Distil House Square, and the house and land situated in Broad street, as therein described. Imputing that motive, the charge is, that, to accomplish the design, he, on the first Tuesday of March, 1830, petitioned the Supreme Judicial Court for the County of Suffolk, for leave to sell so much of the real estate as was necessary to pay the balance of that account, and that such proceedings were had that the Court empowered the Administrators to sell so much of the same as would raise the sum of four thousand six hundred and seventy-six dollars and thirty-three cents, and fifty dollars for incidental charges. Having

made these statements, the Complainant then charges that the order of the Court and the authority to sell were procured by falsehood, deception, and fraud, and alleges that in order to procure the consent in writing of Thomas Richardson, and Ann J., his wife, to the granting of the petition, he purchased all their right, title, and interest, in, and to the estate, and that in order to procure the consent in writing of Jacob Badger to the same, he purchased all his right, title, and interest, in, and to the estate in Broad street, and North Federal Court, whereupon those parties consented in writing to the granting of the prayer of the petition; and the consent of Jacob Badger was for himself and as guardian of Augustus H. Badger. But the Complainant alleges that he procured the signature of Almira A. by falsehood and deception, and that through falsehood and deception he procured the signature of her mother to various papers which he fraudulently used and employed; by means whereof, and of the false representations and fraudulent acts and doings, the authority to sell the estates was granted, that, in pursuance of the same fraudulent design, the house and land in Distil-House Square were advertised to be sold in Boston, at public auction, on the twentieth day of July, 1830, without giving any notice whatever of the place at which the sale was to be made, that the first-named Respondent procured one William P. Hart to bid off the estate for him, and that Hart bid two thousand eight hundred and twenty dollars for the estate, and that the same was struck off to him for that sum, which was greatly less than the value of the premises, that in the month of January, 1831, he caused to be advertised for sale, at public auction, on the fifth day of the following February, so much of the real estate situated in Broad street and North Federal Court, subject to the life estate of the widow, as would raise the sum of seven hundred and eighty-six dollars for the payment of alleged debts and incidental charges, and procured the same person to bid off the property for him. On that occasion the estate situated in North Federal Court was struck off to one Adin Hall for the sum of four hundred dollars, and only about one-fifth part of the Broad street estate was struck off to William P. Hart, but

the Complainant alleges that the Respondent pretended to offer those estates again for sale at public auction, on the twelfth day of March following, but without any previous legal notice, and that the Respondent procured the same person to bid off the Broad street estate for his own benefit, and that the same was struck off to the bidder for six hundred and thirty-six dollars, being less than one-half the value of the premises, subject to the incumbrance. Both of those estates, to wit: the house and land on Distil-House Square and the Broad street estate, were conveyed by the Administrators, as the Complainant alleges, to the bidder, without his paying any thing therefor, and were by him conveyed to the first-named Respondent without any other consideration than what was paid to him by the latter for his fraudulent services in the premises. Sale was also made, on this last occasion, of the house and land in North Federal Court, which had previously been bid off by Adin Hall, and the charge is that the same Respondent procured one Daniel Gilpatrick to attend the sale and bid off the property for his benefit; that the same was struck off to the bidder for the sum of one hundred and fifty dollars, being a sum greatly less than the value of the premises, subject to the incumbrances; that the same was conveyed to the bidder without consideration, and was by him in the same way conveyed to the first-named Respondent. Two mortgages of certain portions of the real estate were made by the first-named Respondent to Samuel D. Parker, who is also joined as a Respondent in the Bill of Complaint. He mortgaged the house and land in Distil-House Square, to Parker, on the first day of July, 1854, to secure the payment of six thousand dollars, payable in three years, and the other mortgage is of the Broad street estate, and is dated on the fourteenth day of February, 1855, and was given to secure the sum of one thousand dollars, also payable in three years. Conveyance was also made by him to the city of Boston, of the house and land in North Federal Court, and the corporation is also joined as a Respondent in the Bill of Complaint. Complainant also alleges that Samuel D. Parker well knew that his grantor was not possessed of any interest in the estates so conveyed to him, beyond four-tenths of the Broad street estate, and

one-tenth of the other estate; and he also alleges that, before the city of Boston paid the consideration and took the delivery of the deed conveying the estate in North Federal Court, the city was duly notified of the rights of the Complainant, and of those under whom he claims, as set forth in the Bill of Complaint. Superadded to these various allegations, the Complainant also alleges, that, on the eleventh day of June, 1858, six of the other heirs, to wit: Augustus H., Almira A., Mary H. B., Eliza M., Jacob, and Alfred C., sold, assigned, transferred, set over and conveyed to him all their right, title and interest in and to, the before-mentioned estates, and the rents, and profits, and proceeds thereof, whereby he became possessed of the same, both at law and in equity; and finally he alleges that the fraudulent acts and doings of the first-named Respondent were unknown to him or to his co-heirs, until within five years before the filing of the Bill of Complaint, and that as soon as the discovery thereof, they requested him to account, pay over what was due, and convey to them their respective interests in the estates, and well hoped that he would comply with the requests, but that he refused.

I. Answer was filed by Joseph Badger, during his life-time, in which he denied every material allegation in the Bill of Complaint, and in a special manner he denied, upon his personal knowledge, that the Administration accounts, or lists of debts, or either of them, were false, or were rendered and filed in the Probate Court with any fraudulent motive, design, or purpose whatever, but averred that they were so rendered and filed because the same were correct, and because it was the duty of the Administrators to render the same. He admitted that they obtained leave to sell the real estate of the intestate for the payment of debts due from the estate, and that they sold the several estates mentioned in the Bill of Complaint in pursuance of the order and license so obtained, but denied, on his personal knowledge, that the license was procured for the fraudulent purpose of enabling his co-Administrator to get possession of the estates, or any of them, to his own use and benefit, or that any fraud, misrepresentation, or improper means whatever, were employed

by him or his associate to induce any person to assent to the petition or sale; and also denied that the sales of the several estates were not duly notified, or that the several estates were not sold at the time they were respectively advertised for sale. Separate answers were also filed by the other Respondents, and those answers also, especially the one filed by Erastus B. Badger, deny every material allegation in the Bill of Complaint.

II. Where the answer is responsive to the Bill of Complaint, and positively denies the matter charged, and the denial has respect to a transaction within the knowledge of the Respondent, the answer is evidence in his favor, and unless it is overcome by the satisfactory testimony of two opposing witnesses, or of one witness, corroborated by other facts and circumstances, which give to it greater weight than the answer, or which are equivalent in weight to a second witness, it is conclusive so that the Court will neither make a decree or send the case to trial, but will simply dismiss the Bill of Complaint. 2 Story Eq. Jur. (8th Ed.) 1528; Pember, vs. Mathers, 1 Bro. ch. P. 52; Walton vs. Hobb, 2 Atkins, 19; Clark's Exrs. vs. Van Reimsdyk, 9 Cran. 160. Keeping that principle constantly in view, it will become necessary to look at the evidence with some care in order to ascertain what is the true state of the facts in regard to the matters in controversy between the parties. Administrators were lawfully appointed and duly qualified according to law to discharge their duties as such, and it is not denied that an inventory of the estate of the intestate was duly made and returned, nor is it pretended that the Administrators have not fully and justly administered the personal estate. They settled their first administration account on the ninth day of October, 1820, and no attempt is made to impeach the decree allowing the same and ordering it to be recorded. By the copy of the record it appears that they charged themselves in that account with all the personal estate as the same was appraised, which, with other charges as therein specified, amounted to six thousand seven hundred and forty-two dollars and four cents, and were allowed for sums paid out on account of the estate, six thou-

sand four hundred and seventy-five dollars and fifty-two cents, which left only a balance of two hundred and sixty-six dollars and fifty-two cents in their hands. On the same day they filed a list of debts due and owing by the estate, and a schedule of debts not collected and supposed to be due to the estate. Debts due to the estate might not be collected, but such as were owed by the estate must be paid, and they accordingly, on the same day, petitioned the Court of Probate for license to sell real estate for that purpose, and the Bill of Complaint admits that on the thirteenth day of the same month, they, as such Administrators, were authorized to sell so much of the real estate of the intestate, as would raise the sum of six thousand five hundred and eleven dollars and thirty-seven cents. Pursuant to that authority, sales of real estate were made by the Administrators to the amount of three thousand six hundred and thirty-five dollars, and no fraud or irregularity on that behalf is charged upon the Administrators. Other debts to a large amount were due and unpaid by the estate, but the authority conferred upon the Administrators to sell the real estate for that purpose, although not exhausted, was not further exercised, and the creditors appear to have acquiesced in the delay. Nothing further was done in the Probate Court until the twelfth day of March, 1827, when the widow of the intestate petitioned to have her dower set off to her, and on the sixth day of April following, the estates mentioned in the Bill of Complaint were assigned to her in full for her dower. Second administration account was presented by the Administrators on the tenth day of September, 1827, and, on the seventeenth day of the same month, the same was allowed and ordered to be recorded. All sums received by the sales of the real estate were duly charged in the account, and it is not even suggested that there is any error in that part of the account. List of debts filed and recorded on the ninth day of October, 1820, included three notes described as notes in bank, secured by mortgage, dated November 1, 1818, and were carried out in the papers as amounting to three thousand dollars. Immediately under the same is also another sum of three hundred and forty-five dollars described as interest on the above. Included in the same list, also, is a note to D.

Pulsifer, for one hundred dollars, but whether on interest, or not, does not appear. When the Administrators presented their second administration account, they also filed another list of debts due by the estate, amounting in the whole to the sum of two thousand two hundred and twenty dollars. Three items only are included in that list, consisting of two notes at bank, secured by mortgage, amounting to two thousand dollars, and one year's interest on the above carried out one hundred and twenty dollars; and the remaining item is one note to D. Pulsifer, one hundred dollars, which plainly is the same note as that specified in the first list of debts. Decree was entered on the same day the second administration account was allowed, ordering the list of debts to be filed and recorded. Former license to sell real estate having expired by lapse of time, these proceedings in the Probate Court were necessary to lay the proper foundation for an application to the Supreme Judicial Court for a renewal of the authority to sell. Notice to all persons interested, however, is required before decree, unless the parties voluntarily appear, and assent to the same, or in some way signify their assent in writing, which is often done in Probate proceedings, in order to save the expense of publication. Accordingly both the second administration account and the second list of debts were respectively examined and approved by and in behalf of all the heirs to the estate, and there is no allegation in the Bill of Complaint that the signatures of the parties to these papers are not genuine, or that they were unfairly obtained. Those writings are signed by each of the four heirs, who were then of age, and by the widow, for herself and the six minor children. Complainant charges that the account was false and fraudulent, and that there was nothing due from the estate to the Administrators, or to any other person, but he does not allege that the guardian was guilty of any fraud in approving the account and list of debts, or that her signature to these writings was improperly procured.

Accusations like these, appertaining as they do to Probate accounts formally settled more than thirty years ago, ought to be specific, and point out the items of the account which are alleged to be false, especially when, as in this case, it appears that all the parties impli-

cated, and many of those who had the best means of knowledge in regard to the transactions, are dead. Administrators charged one thousand three hundred and nine dollars for the time and trouble of the first-named Respondent, in settling the estate, and that amount was allowed in the account for his services. Specification of that item as a false one, is made in the Bill of Complaint, and it is the only one pointed out in that account as false.

III. Much testimony was introduced to show that the Respondent, when he was appointed, agreed to serve without charge, but after the lapse of thirty-five years the *written* assent of the heirs to the account, certifying that they had examined and approved the same, must be regarded as a conclusive answer to that imputation. Falsity is also imputed to the second list of debts, as recorded on the seventeenth of September, 1827, but it is evident, upon comparing the same with the list recorded on the ninth day of October, 1820, that the two are the same so far as respects the items embraced in the second list. Three mortgage notes were filed in the first list, and but two in the second. Interest to the amount of three hundred and forty-five dollars was charged in the first as arising on those mortgage notes, but the amount set down in the second list is but one hundred and twenty dollars. Taking the facts as they appear on the face of the papers, it is a reasonable presumption that one of the notes had been paid, and that all the interest on the other two had been paid, except for the last preceding year before the list was filed. Inference, however, need not be resorted to, as it expressly appears that the first note, and interest on the three notes to the amount of three hundred and seventy-eight dollars and thirty cents, were paid by the Administrators, and the amount was allowed in the second administration account. Evidently, therefore, the notes were payable with interest, and the clear inference is, that all the accruing interest, except for one year had been paid, or in some manner liquidated, when the second list of debts was presented. Petition for a renewal of the license to sell real estate was presented by the Administrators on the first Tuesday of March, 1830, to the Supreme Judicial

Court for the County of Suffolk. They state in their petition that they obtained such license from the Probate Court on the thirteenth day of November, 1820; that they refrained from exercising the entire power so granted, at the request of the heirs and their guardians, and in the belief that the price of the real estate would be increased by the delay. Receipt of notice was acknowledged by the widow, heirs, and guardians, and they waived all objection to the granting of the prayer of the petition. Notice having been acknowledged, and all objections waived, the decree ordering the license was entered at the same term in which the petition was presented. Sales were accordingly made of house and land in Cambridgeport: houses and land in Distil-House Square: an undivided part of an estate situated in Lynn: house and land situated in North Federal Court, subject to the life estate of the widow: and house and land in Broad street, which was also subject to the widow's right of dower. Aggregate amount of the sales was four thousand seven hundred and twenty-three dollars and fifty cents, as fully and regularly appears by the respective returns of sales duly made and sworn to by the Administrators on the twenty-fifth day of April, 1831, filed in the Probate Court for the proper County. Having completed these proceedings, and given public notice to all persons interested, the Administrators presented their third administration account. Credit was duly given to the estate for the amount received for the sales of real estate, and they were allowed, for payments made and expenses incurred on account of the estate, the sum of four thousand seven hundred and seventy-four dollars and sixty-five cents, leaving a small balance against the estate. It is not pretended that there is any error in the form of these proceedings, and the pretence, if set up, could not be sustained for a moment, as it is obvious, from an inspection of the record, from the appointment of the Administrators to the final settlement of the third administration account, that so far as form is concerned, every step taken in the proceedings was correct and according to law.

IV. Four principal objections are taken by the Complainant to the legality of the proceedings. First, the one before mentioned,

that the charge for services in the second administration account, and the second list of debts presented on the same day to the Probate Court, were false and fraudulent. Secondly, that the license granted by the Supreme Judicail Court, for the sale of real estate, was fraudulently obtained. Thirdly, that the Administrators intentionally neglected to give proper notice of the time and place of sale of the estates, for the fraudulent purpose of enabling the first-named Respondent to purchase the same at a price below their real value. Fourthly, that he employed two persons to attend the sales, and bid off the estates, and that they accordingly attended, and bid off certain parcels of the estates for his use and benefit, and subsequently conveyed the same to their employer, without any compensation except what was paid to them for their illegal services.

1. Sufficient has already been remarked to show that the first objection cannot be sustained. More than thirty-one years have elapsed since the third administration account was settled, and now, when the Administrators who made the account, and presented the list of debts, and the guardian of the Complainant, who approved the same, are all three dead, it is but just to hold that a party making such a charge, under such circumstances, shall be required to prove the charge by full and satisfactory evidence.

2. Express fraud, also, is the foundation of the second objection, and in respect to that charge, the rule is, that he who makes it must prove it. Nothing less than proof of fraud could possibly avail the Complainant in this case, as the Court to whom the petition was addressed was bound to inquire whether debts were due and unpaid by the estate, before they granted the license, and in the absence of fraud, it must be assumed that the finding of the Court is conclusive. Grignon's Lessee *vs.* Astor and al., 2 How. 319. Several suggestions are made to show that the license was obtained by fraud, but no one of them is satisfactorily proved. One is that the notes embraced in the second list of debts were barred by the Statute of Limitations, but the clear inference from all the circumstances, is otherwise, as has already appeared. Those notes were subsequently paid by the Administrators, and

charged in their third administration account, and no one of the heirs made any opposition to the decree allowing the same, although duly notified to appear and show cause, if any they had, why the same should not be approved. Another suggestion is, that the assent of the widow and heirs to the petition for the license to sell, was improperly obtained, but the suggestion is not sustained by any satisfactory proof. Some attempt was made to show that the signature of the widow is not genuine, but the weight of the evidence clearly shows that she either signed her name, or authorized it to be placed to the instrument.

3. Satisfactory proof that notice of the time and place of sale was given, is exhibited in respect to every parcel sold under the license obtained from the Supreme Judicial Court. None of the sales effected under the license from the Probate Court are drawn in question, and of course nothing need be remarked in regard to those sales.

4. Testimony was introduced by the Complainant, tending to prove that the first-named Respondent, who was one of the Administrators of the estate, employed one William P. Hart to attend the sale of real estate on the twentieth day of July, 1830, for the purpose of bidding off, for his own use and benefit, some portion of the estate which was advertised to be sold on that day, and that he accordingly attended the sale, and on that occasion he was the highest bidder, on the parcel situate in Distil-House Square, and the same was struck off to him for the sum of two thousand eight hundred and twenty dollars, as specified in the third administration account. Administrators conveyed the same to William P. Hart on the twenty-third day of July, 1830, and, on the fourteenth day of March, 1831, the grantee in that deed conveyed the same to the first-named Respondent. Evidence was also introduced by the Complainant, tending to show that the first-named Respondent procured in like manner the same person, and also one Daniel Gillpatrick, to attend the sale of the real estate advertised to be sold on the twelfth day of March, 1831, to bid off some portion of the estate for his own use and benefit, and that the former was the highest bidder for the house and land, situated in North Federal

Court, and that the same was struck off to him, subject to the life estate of the widow, for the sum of one hundred and fifty dollars, and that the latter was the highest bidder for the house and land situated in Brown street, subject to the widow's right of dower, and the same was struck off to him for the sum of six hundred and thirteen dollars, as appears by a copy of the proceeding, as recorded in the Probate Court on the return of the sales. Conveyances were duly made by the Administrators to the respective bidders, and they subsequently conveyed their respective interests to the first-named Respondent. Fraudulent design is charged by the Complainant in respect to the employment of these persons to bid on the real estate, but proof to that effect is wholly wanting in the record. On the contrary, the evidence shows to the satisfaction of the Court, that the sales were properly advertised, and in all other respects properly conducted, and that every reasonable exertion was made by the Administrators to procure the attendance of bidders, and to obtain the best prices for the estates. The evidence clearly shows that the senior Administrator neither employed those persons to bid, or had any knowledge that they or either of them had been employed by his associate. It is insisted by the Complainant on this branch of the case, that the sales to Hart and Gillpatrick were absolutely void, because in bidding off the same they acted as the agents of the Administrators. Michoud *v.* Girod, 4 How. 552.

On the other hand it is insisted by the Respondents, that inasmuch as the case made in the bill of complaint is one of actual, positive fraud, that the Complainant is not entitled to relief, unless he proves those allegations, that having charged actual fraud, he cannot now abandon that ground and show himself entitled to relief by proving constructive fraud, arising out of the peculiar relation between himself and the first-named Respondent. Support of that proposition is certainly found in Eyre *vs.* Potter, 15 How. 54, but in the view taken of this case, it will not be necessary to decide that question in the present controversy because I am of the opinion that the claim of the Complainant is barred by lapse of time. Courts of Equity, says Mr. Justice Grier, in Wagner and al., *vs.* Baird and al., 7 How. 258, in cases of concurrent jurisdiction, con-

sider themselves bound by the Statutes of Limitation, which govern courts of law in like cases, and this rather in obedience to the statutes than by analogy. In many other cases they act upon the analogy of the limitations at law, as where a legal title would, in ejectment, be barred by twenty years, adverse possession, courts of equity will act upon the like limitation, and apply it to all cases of relief sought upon equitable titles, or claims, touching real estate. Moore *vs.* Greene, 2 Cur. C. C. R. 202. 2 Story's Eq. Jur. (8th ed.) 1520. Farnum *vs.* Brooks, 9 Pick. 243. But, says the same learned judge, there is a defence peculiar to courts of equity, founded on lapse of time, and the staleness of the claim, where no Statute of Limitation governs the case. In such cases courts of equity often act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands, by refusing to interfere where there has been gross laches in prosecuting the claim, or long acquiescence in the assertion of adverse rights. 2 Sug. on V. & P. (7th Am. Ed.) 899. Roberts *vs.* Tunstall, 4 Hare, Ch. R. 275. Jenkins *vs.* Pye, 12 Pet. 241. Hovenden *vs.* Lord Annesley, 2 Sch. & Lef. 636. Sullivan and al. *vs.* Sullivan and al., 21 Law Rep., 531. McKnight *vs.* Taylor, 1 How. 168. Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance, or impediment, caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the Chancellor. Sales in this case, which the Complainant seeks to set aside, were made in 1830 and 1831, more than thirty years ago, and no reason or excuse is assigned for the delay. Present suit was instituted on the sixth day of September, 1858. Complainant, it is true, alleges, that the fraudulent acts und doings of the first-named Respondent were unknown to him until within five years last past, but the Bill of Complaint does not allege that the supposed fraudulent acts and doings of the Administrator were in any manner concealed from him, or when, or by what means the fraud was discovered. Such general and unsubstantial allegations of excuse, cannot be regarded by a Court of Equity as sufficient. On the contrary, it is well settled, that if the Complainant would

avoid the effect of lapse of time, or of the Statute of Limitations, on the ground of concealed fraud, he must set forth with particularity, when, and by what means, the fraud was discovered, and the averment so made must be supported by the proofs. Stearns *vs.* Page, 7 How. 829. Wagner *vs.* Baird, 7 How. 258. Fisher *vs.* Boody, 1 Cur. C. C. R. 218. Carr *vs.* Hilton, 1 Cur. C. C. R. 392. Moore *vs.* Green, 2 Cur. C. C. R. 202. Many of the heirs have been examined as witnesses, and not one of them has testified to any concealment on the part of the Respondent, or any ignorance upon the subject. His counsel insist that the claim is not barred, because the properties were subject to a life estate which did not terminate until the twenty-fourth day of September, 1855, when the widow of the intestate deceased, but I am of the opinion that the continuance of her life estate has no effect upon the question of limitation in this case. Purchasers took an absolute title in the estates as against the Complainant, and those under whom he claims, and in equity the rule is, that the question of acquiescence is not affected by the circumstance that the particular estate had not determined during the lapse of time, since the conveyance might at any time have been avoided, if obtained by fraud, as alleged. Sullivan and al. *vs.* Sullivan and al., 21 Law Rep. 531. Andrew *vs.* Wingly, 4 Brown ch. R. 125. Bickford *vs.* Wade, 17 Ves. J. pp. 94, 97. Jenkins *vs.* Pye, 12 Pet. 241. Hovendon *vs.* Lord Annesley, 2 Sch. & Lef. 636. Bowman *et al vs.* Wathen, 1 How. 193.

Applying these principles to the present case, I am of the opinion that the claim in this case is barred by the limitation of twenty years. When sales were made, the Complainant, and those under whom he claims, were minors, and consequently within the exception of the statute, but the proof is full to the point, that all of them, except the Complainant, had been of age more than twenty years when the first suit in this case was commenced. Jacob was born in 1803, and came of age in 1824. Almira A. was born in 1807, and came of age in 1828. Augustus H. was born in 1810, and came of age in 1831. Alfred C. was born in 1813, and came of age in 1834. Eliza M. was born in 1814, and came of age in 1835. Mary H. B. was born April 12, 1816, and came of age on the twelfth day of April, 1837. Age of Complainant does not distinctly

appear, and it may be that he had not been of age twenty years on the eighth day of May, 1857, when the former suit was commenced. Proofs on this point are not clear, and perhaps it would be going too far to say that his original share of one-tenth is barred by that limitation. But if that be so, still I am of the opinion that the entire claim is barred, as a stale claim, upon the ground of gross laches, and long unexplained acquiescence in the operation of an adverse right. Under such circumstances Courts of Equity will often treat a lapse of a less period than the one specified in the Statute of Limitations as a presumptive bar to the claim. Smith *vs.* Clay, Ambler R. 645. Kane *vs.* Bloodgood, 7 Johns. ch. R. 93. Dexter *vs.* Arnould, 3 Sum. 152. Provost *vs.* Gratz, 6 Wheat. R. 461. 2 Story's Eq. Jur. (8th Ed.) sec. 1520. Another answer to the claim may also be given, which is as applicable to the Complainant as to those under whom he claims. Actions for lands sold by Executors, Administrators, or Guardians, cannot be maintained in this State by any heir or other person claiming under the deceased testator or intestate, unless the same be commenced within five years next after the sale. Rev. Stat. Mass. ch. 71, sec. 37, p. 458; Chap. 72, sec. 19, p. 461. Objection is made by the Complainant that this limitation cannot operate, because it is not set up in the answer. But the objection, I think, is not well taken, as applied to the present case. Courts of Equity, says Judge Story, act upon the analogy of the law, as to the Statute of Limitations, and will not entertain a suit for relief, if it would be barred at law. If the objection does not appear on the face of the bill, it may be taken by way of plea or by way of answer; but the clear inference is, that the learned author did not regard the plea or answer as necessary when the objection was apparent on the face of the Bill of Complaint. Story's Eq., Plea. sec. 503. Cooper Eq., Plea. 167. Mitford's Pl. by Jeremy, 212. Maxwell *vs.* Kennedy, 8 How. 222. Hovoden *vs.* Annesley, 2 Sch. and Lef. p. 638.

In view of the whole case, I am of the opinion that the Complainant is not entitled to relief, and the Bill of Complaint is accordingly dismissed with costs.

Copy. Attest:

J. W. DANA, *Reporter.*